

**(2001) 04 AP CK 0020**

**Andhra Pradesh High Court**

**Case No:** C.R.P. No. 1293 of 2001

V. Bhupathamma

APPELLANT

Vs

R. Kalyani

RESPONDENT

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**Date of Decision:** April 24, 2001

**Acts Referred:**

- Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 - Rule 38, 39, 53
- Civil Procedure Code, 1908 (CPC) - Section 115, 115(1)

**Citation:** (2001) 5 ALT 648 : (2001) 2 APLJ 40

**Hon'ble Judges:** B.S.A. Swamy, J

**Bench:** Single Bench

**Advocate:** M. Chandrasekhar Reddy, for the Appellant; P.S. Narayana, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

B.S.A. Swamy, J.

The petitioner, a licensee of Indian Liquor 24, filed this revision petition questioning the order passed by the First Additional Junior Civil Judge, Tirupathi in I.A.No. 1026 of 2000 in O.S.No. 898 of 2000 granting temporary injunction restraining her from interfering with the business alleged to be carried on by the respondent as confirmed by the order of the III Additional District Judge, Tirupathi in CMA No. 47 of 2000.

2. Heard both sides.

3. The learned Counsel for the respondent raised a preliminary objection by contending that this revision petition is not maintainable, as the Court below which passed the impugned order was (not) having jurisdiction. In support of his contention, he relied on certain judgments. Before advertiring to the issue, I would like to refer to the factual background of this case for effective adjudication.

4. It is not in dispute that the petitioner herein is the licensee of IL 24 to vend liquor in retail during the Excise year 1998-99. As per the Rules, before obtaining licence, the licensee has to deposit 1/3rd of the licence fee and execute a bank guarantee for the remaining licence fee payable for that year. Having completed the formalities, i.e., by paying Rs. 2.00 lakhs in cash and giving bank guarantee for Rs. 4.00 lakhs, the petitioner obtained the Licence No. 277/ 98-99, dated 2-4-1998. The licence was subsequently renewed for the Excise Years 1999-2000 and 2000-2001. It is also seen from the A.P. Excise Act, 1968 certain statutory Rules made thereunder were repealed and A.P. Prohibition Act, 1995 came into force with effect from the Excise year 1995. The Rules made under the old Act were adopted under the new Act also. As per Rule 53 of Indian Liquor and Foreign Liquor Rules, 1970 either the licensee himself or a person in whose favour a nowkarnama in Form No. IL 12 obtained from the department alone is eligible to vend liquor in the licensed premises. In other words, without prior permission of the licensing authority, except licensee, no other person can be permitted to sell the liquor. In the instant case, it is the case of the petitioner that she obtained nowkarnama in the name of the husband of the respondent while obtaining licence for vending the liquor. The respondent filed O.S.No. 898 of 2000 on the file of the First Additional Junior Civil Judge, Tirupathi seeking permanent injunction restraining the petitioner (licenceholder) from interfering with her business in liquor on the ground that the petitioner sold the licence in her favour for a consideration of Rs. 15,000/- on 01-04-1998 itself and since then she was doing business but not the petitioner. The respondent also filed I.A.No. 1026 of 2000 seeking interim injunction. The trial Court granted interim injunction, as also confirmed by the Appellate Court, on the basis of certain exhibits, which were also referred to before this Court, which cannot go to the extent of establishing the claim of the respondent that she purchased the licence under the said agreement. Aggrieved by the said order, the present Civil Revision Petition is filed.

5. The petitioner firstly submitted that the stamp paper which was used for alleged execution of the agreement of sale was issued by the Registrar after 15-05-1998, but no sufficient evidence is placed before this Court on that aspect. This issue is left open. The learned Counsel for the respondent produced before this Court the agreement of sale allegedly executed by the petitioner on 01-04-1998. From the recitals of this document it is seen that the petitioner sold the licence for Rs. 15,000/-. Any amount of doubt will arise on the genuineness of agreement of sale for the simple reason that the licence was obtained by the petitioner on depositing Rs.2.00 lakhs and giving bank guarantee for another sum of Rs.4.00 lakhs, but it was alleged to have been sold for a sum of Rs. 15,000/-. Secondly, it is an admitted fact that the licence was issued in favour of the petitioner by the Excise authorities on 02-04-1998, but surprisingly in the alleged agreement of sale dated 01-04-1998 the licence number was quoted. Further under Rule 38 of the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970 no licensee can transfer the licence in his/her

name without prior sanction of the Commissioner and under Rule 39 no other person can be included as a partner in the business of the licensee without prior permission of the licensing authority. For the first time after two years of the alleged purchase of licence, she filed the suit on 08-02-2000 seeking permanent injunction against the petitioner. The business in liquor is controlled by the Andhra Pradesh Prohibition Act, 1995 and the rules framed thereunder. The Civil Court, in my view, could not have entertained the suit for permanent injunction against the licenceholder. Even assuming that the Civil Court is having jurisdiction to entertain a suit relating to the business in liquor, since it is the specific case of the respondent that she purchased the licence under an agreement of sale, and the petitioner has not transferred the licence in her favour, she may have to file a suit for specific performance of the alleged agreement, but not a suit for permanent injunction. Even assuming, without admitting, that a suit for injunction is maintainable in law in a case of this nature, the Courts below completely missed the aspect that the suit was instituted nearly after two years of the alleged purchase. It is also to be kept in mind that the respondent's husband by virtue of holding nowkarnama to carry on the business in the absence of the petitioner in the licensed premises might have obtained signature of the petitioner for various purposes and he might have used some stamp papers for bringing into existence the agreement of sale. In fact, the petitioner has gone to the extent of contending that respondent was given in marriage to the nowkarnama holder much later than the grant of licence. I do not want to express any opinion on this aspect at this stage. Another aspect the Courts below missed is that simultaneously the respondent filed an application before the Commissioner seeking transfer of the licence in her favour under Rule 38 of the Andhra Pradesh Indian liquor and Foreign Liquor Rules, 1970 on 15-05-2000 and the Commissioner called for a report on the said application. The Excise Superintendent having enquired into the matter reported that the petitioner is carrying on the business. On the basis of that report the request of the respondent for transfer of licence was rejected. Questioning the said rejection, the respondent filed Writ Petition No. 24485 of 2000, which was dismissed on 09-02-2001.

6. Nextly, it is seen that if the petitioner really sold the licence to the Respondent the Court is expected to be satisfied *prima facie*, that the respondent repaid the 1/3 of the licence fee and replaced the Bank Guarantee given by the Petitioner by her own Bank Guarantee.

7. From the above factual narration it is to be held that firstly the very suit filed for permanent injunction is not maintainable in law. Secondly, the Courts below could not have granted temporary injunction without looking into the facts of the case and without referring to the various provisions under the Andhra Pradesh Prohibition Act and the Rules made thereunder as it is a comprehensive statute governing the entire production, manufacture and sale of liquors in the State of Andhra Pradesh and without visualising the effect of granting temporary injunction. The Courts below have also not looked into the aspect that the suit was filed two years after the

alleged agreement of sale and the Courts below readily granted temporary injunction on the basis of certain documents standing in the name of the respondent, which could not conclusively establish that the respondent was doing the business.

8. Now coming to the objection raised by the learned Counsel for the respondent, it is useful to extract Section 115 of the CPC Code (for short "the Code").

115. (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where-

- (a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or
- (b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

9. From the above it is seen that High Court is competent to call for the records of any case if it feels that any Court subordinate to it (a) has exercised a jurisdiction not vested in it by law, or (b) has failed to exercise a jurisdiction so vested, or (c) has acted in the exercise of its jurisdiction illegally or with material irregularity and correct the jurisdictional error committed by the Courts below. Under proviso, the Court is not expected to vary or reverse any order made in the course of a suit or other proceeding except where the Court disposed of the suit itself if it is deciding the issue or if the order is allowed to stand would result in failure of justice or cause irreparable injury to the party against whom it is made. According to me, if the order of injunction granted by the Courts below is allowed to stand, the licenceholder who obtained the licence by investing huge amounts in accordance with the provisions of the Excise Act and the rules made thereunder is not being allowed to enjoy the benefits derived from the licence obtained by her. On the other hand, as the respondent did not move the Court for over two years after having obtained an agreement of sale, she can wait for some more time to get the suit filed by her, disposed of.

10. The learned Counsel for the petitioner submits that this Court held that any transfer of licence without obtaining prior permission of the licensing authority, (the very transfer) is to be treated as void. In support of his contention, the learned Counsel for the petitioner cited a judgment of the Supreme Court reported in Commissioner of Income Tax, Visakhapatnam Vs. Circar Enterprises . When the judgment was brought to the notice of the Court below, the Court below brushed away the judgment by stating that the issue has arisen under Income Tax Act without knowing the principle laid down in the judgment. This shows the ignorance of the officers concerned on the legal aspect of the matter.

11. Now coming to the judgments referred to by the learned Counsel for the respondent in Parachuri Madhavacharyulu v. Manam Venkat Rao 1984 (1) ALT 27 this Court observed that the proceedings u/s 115 of the Code applies to the jurisdiction alone, irregular exercise of or non-exercise of it or the illegal assumption of it. It cannot be directed against the conclusion of law in which the question of jurisdiction is not involved. No error of fact, however great, can be cured by the High Court in revision, unless an error of law relates to lower Court's jurisdiction. The second case is in the matter of Bharath Heavy Plates & Vessels Limited, Visakhapatnam 1985 (2) ALT 127 : AIR 1985 A.P. 207 wherein this Court held that entertaining a Civil Revision Petition against interlocutory order is not sufficient to hold that the interlocutory order suffers from jurisdictional errors, but additionally it must also be bad for the reasons of its occasioning failure of justice. The learned Counsel also referred to two more judgments of the Supreme Court to the same effect i.e., Shri M.L. Sethi Vs. Shri R.P. Kapur, and The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, whereunder their Lordships have held that even if the decision is not legal, unless the same relates to the question of jurisdiction, the High Court cannot interfere with the order passed by the lower Court. Having considered the Clauses (a), (b) and (c) of Section 115(1) of Code, to my mind, the error committed by the Courts below goes to the root of the matter and in fact I have given time to the Counsel for the respondent to produce a judgment of any Court where in similar circumstances of the case a Civil Court granted temporary injunction restraining the holder of licence obtained under the provisions of a specific enactment from doing business, but the Counsel could not lay his hands on any such judgment. As I have stated supra, in the normal course, the trial Court would not have entertained a suit for permanent injunction restraining the licence holder from doing business. Hence, I feel that the case suffers from jurisdictional flaw, which resulted in granting temporary injunction. Hence, to my mind, the Courts below have not only exercised the jurisdiction vested in them wrongly in entertaining the suit, but they have committed gravest error in granting temporary injunction restraining the licenceholder from doing the business and if the order is allowed to stand, the licensee who obtained the licence by paying huge amounts will suffer irreparable loss and injury, which cannot be compensated in the event the suit is dismissed. The

Courts below embarked upon common law jurisprudence in entertaining the suit wherein the Courts held that in a suit for injunction the Courts are expected to see the possession and title to the property, which may not be of any consequence. This is not a case relating to immovable property. The grant of licence is governed by a statute made by the Legislature and the Rules made thereunder. Hence, the common law jurisprudence cannot be pressed into service in a case of this nature. Hence, this Court can interfere with the impugned order in exercise of its revisional jurisdiction u/s 115 of the Code.

12. During the pendency of the revision petition, the respondent filed CMP.No. 8618 of 2001 to receive certain papers relating to subsequent events that have taken place as additional evidence for deciding the CRP. The subsequent event is that as the petitioner is not being allowed to do the business by the respondent, of course, in collusion with some of the excise authorities, she filed an application on 01-04-2001 surrendering the licence to the Excise Department. The Counsel filed this paper before this Court perhaps to show that the respondent is in effective possession of licensing premises. But the fact remains that the licence was not transferred in her name. When once the petitioner surrendered the licence, the respondent cannot do the business. The Counsel for the petitioner states that he has no instructions from her client to the effect that she surrendered the licence. Even assuming that the licence was surrendered, so long as the licence is not transferred in favour of the respondent, she cannot do any business.

13. Accordingly the orders of the I Additional Junior Civil Judge, Tirupathi in I.A.No. 1026 of 2000 as confirmed by the III Additional District Judge, Tirupathi in CMA.No. 47 of 2000 are set aside and I.A.No. 1026 of 2000 seeking temporary injunction is dismissed as devoid of merits. The revision is accordingly allowed.