

(2002) 07 AP CK 0024

Andhra Pradesh High Court

Case No: A.S. No's. 161 of 1991 and AAO No. 472 of 1989

Shaik Khaza Mia

APPELLANT

Vs

Syed Riyasath Ali and Another

RESPONDENT

Date of Decision: July 30, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 96

Citation: (2003) 1 ALT 81 : (2002) 2 APLJ 404 : (2003) 1 BC 543

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

Bench: Single Bench

Advocate: P.V.R. Sharma, for the Appellant; D. Prasannakumari, for the Respondent

Final Decision: Allowed

Judgement

P.S. Narayana, J.

The plaintiff in O.S. No. 181/82 on the file of the Subordinate Judge, Kothagudem, is the appellant herein. Likewise the appellant-plaintiff preferred C.M.A. No. 472/89 aggrieved by the order made in LA. No. 682/88 in O.S. No. 181/92 on the file of the Subordinate Judge, Kothagudem. The appellant-plaintiff filed the suit against defendants 1 and 2 as an indigent person for recovery of a sum of Rs. 20,000/- towards costs of half of the value of the vehicle together with interest at 12% p.a. from the date of the suit and for costs of the suit. The 1st defendant alone filed written statement and the 2nd defendant remained ex parte.

2. In view of the short question involved in the matter, the respective pleadings of the parties need not be dealt with at length. It is suffice to state that on the strength of the respective pleadings of the parties the following issues were settled by the Trial Court :

(1) Whether the plaintiff is entitled for any amount, if so, to what amount?

(2) Whether this Court has jurisdiction to entertain the suit?

(3) To what relief?

3. The defendant in the suit also filed I.A. No. 682/88 to dispauper the plaintiff on the ground that the appellant-plaintiff is having capacity to pay the Court-fee and the Court allowed the said application and as against the said order the plaintiff preferred C.M.A. 472/ 82.

4. The said suit was instituted by the above appellant-plaintiff as an indigent person as O.P. No. 68/82 on the file of the Subordinate Judge, Kothagudem and after enquiry into pauperism the said O.P. was numbered as O.S, No. 181/82. The Trial Court had recorded the evidence of PWs 1 to 3 and also marked Exs. A1 and A2 and had ultimately dismissed the suit. After discussing the oral and documentary evidence the Trial Court answered Issue No. 2 to the effect that no part of cause of action had arisen within the jurisdiction of the said Court and hence the said Court has no jurisdiction to entertain the suit. It is peculiar that having held so, the Trial Court instead of returning the plaint to be presented to proper Court had further proceeded with the matter and ultimately dismissed the suit and allowed LA. No. 682/88 in the said suit.

5. Heard both the Counsels on record.

6. Mr. Raja Sekhar, learned Counsel appearing for the appellant in both the appeals had raised a preliminary point at the outset that the Trial Court having held on Issue 2 that it has no jurisdiction to entertain the suit at all should have returned the plaint in view of Order 7 Rule 10 of CPC and in this view of the matter since the said procedure was not followed there is no necessity of going into the other details. The learned Counsel also submitted that the party was unable to produce certified copy of the decree to prefer appeal in view of the specific direction given by the Trial Court relating to the payment of Court-fee. The learned Counsel also contended that when once it is to be accepted that no part of cause of action arose within the jurisdiction of the Subordinate Judge, Kothagudem then the matter has to be proceeded with again from the beginning i.e., from the stage of O.P. The learned Counsel also drawn my attention to the following judgments--Md. Aslam Khan v. Bhaskar Rao 1997(2) ALD 448; [Radhakrishnamurthy Vs. Chandrasekhara Rao](#) ; [Smt. Nandita Bose Vs. Ratanlal Nahata](#) ,

7. As can be seen from the facts of the case a clear finding had been recorded at para 15 of the judgment that no part of cause of action arose within the jurisdiction of the Subordinate Judge, Kothagudem and having held so instead of returning the plaint the learned Subordinate Judge, Kothagudem had gone into the other merits of the matter and had ultimately dismissed the suit and also allowed the application filed by the defendant seeking the relief to dispauper the plaintiff. This course adopted by the learned Subordinate Judge, Kothagudem cannot be sustained. Order 7 Rule 10 of CPC deals with return of the plaint which reads as follows :

"Subject to the provisions of Rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted."

8. In *Md. Aslam Khan v. Bhaskar Rao* (supra), it is held that where the Court recorded a finding that it has no territorial jurisdiction to try the suit as the cause of action did not arise in his territorial jurisdiction of the said Court, the Court cannot dismiss the suit but it should only return the plaint for presentation in proper Court.

9. In *Radhakrishna Murthy v. Chandrasekhara Rao* (supra), it is held that where the suit was instituted in a Court having no jurisdiction to entertain it, the proper procedure is to return the plaint for presentation to proper Court and not to dismiss it.

10. In the light of this legal position the procedure adopted by the learned Subordinate Judge, Kothagudem is not in accordance with law. The learned Subordinate Judge, Kothagudem when had arrived at a conclusion that the said Court has no jurisdiction the proper course would have been to return the plaint to present the same to proper Court. It is needless to point out that when the Court is not having jurisdiction and when the plaint has to be returned, the enquiry as to the pauperism of the plaintiff again has to be conducted only by the Court having competency or jurisdiction to try the said suit. Hence in the circumstances, the appellant-plaintiff in O.S. No. 181/1982 and C.M.A. No. 472/89 is bound to succeed.

11. Accordingly, the appeals are allowed to the extent indicated above and the judgment and decree in O.S. No. 181/82 and the order passed in I.A. No. 268/88 in O.S. No. 181/82 on the file of the Subordinate Judge, Kothagudem are set aside and the matter is sent back to the Court below for the purpose of passing appropriate orders fixing some time limit for presentation of the plaint in O.P. to proper Court. There shall be no order as to costs.