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Pasarlapudi Choultry Vs Kadali Srinivasa Rao and Others

C.R.P. No. 4647 of 2000

Court: Andhra Pradesh High Court

Date of Decision: Oct. 4, 2001

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 57(1)#Provincial Small Cause Courts Act, 1887 â€" Section 15, 16, 23

Citation: (2002) 1 ALT 333 : (2001) 3 APLJ 202

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

Bench: Single Bench

Advocate: Metta Chandrasekhara Rao, for the Appellant; None, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.
These six Civil Revision Petitions arise out of the Judgments in Small Cause Suit Nos. 12, 14, 16, 17, 19 and 25 of

1998 on the file of Principal Junior Civil Judge, Razole.

2. In all these Civil Revision Petitions, the unsuccessful plaintiff - Pasarlapudi Choultry - represented by its Executive Officer is the revision

petitioner and different tenants under the Institution figure as respondents in all these Civil Revision Petitions. The suits are filed for recovery of

arrears of rent from the respective respondents-defendants in these suits on the ground that they are cultivating tenants and they are liable to pay

the rents. The respective defendants had filed the written statements denying the averments in the respective plaints and also denying the title of the

plaintiff-choultry and claiming title by adverse possession as well. In all these matters, on the strength of the respective pleadings of the parties, the

following points were framed for consideration:

(1) Whether there is any complicated question of title of the plaintiff/ choultry, which a Small Cause Court cannot finally determine?

(2) Whether the defendant is the cultivating tenant of plaintiff-choultry and failed to pay rents for the years 1995-96, 1996-97 and 1997-98?

(3) Whether the plaintiff-choultry is entitled to recover the arrears of rentals claimed in the suit from the defendant, if so to what extent?

3. The Executive Officer of the plaintiff-choultry was examined as PW. 1 and the respective tenants were examined as D.W. 1 in all these matters

and the documentary evidence of Exs.A-1 to A-8 and Exs.B-1 and B-2 was adduced by the respective parties. The Court below after discussing

the points for consideration, had ultimately dismissed the suits and the plaintiff-institution aggrieved by the said Judgments made in S.C.NOS. 12,

14, 16, 17, 19 and 25 of 1998 had filed these Civil Revision Petitions.

4. Sri Metta Chandrasekhar Rao, the learned Counsel for the revision petitioner-plaintiff, had contended that in the light of the settlement deed

Ex.A-8, dated 9-7-1909, the question of title is not is dispute at all. The learned Counsel also had contended that Section 23 of the Provincial

Small Cause Courts Act, 1887 (for short called as "the Act" hereinafter) has no application to the facts of the case since there is no question of

returning the plaints, though, in these suits, the question of title is involved. It was also contended that the mere denial of title in the pleading for

denial sake is not sufficient and the defendant denying the title in a small cause suit also should prima facie place some material to substantiate his

contention. In all these matters, except the pleas raised by the respective respondents-defendants in all these suits, absolutely there is no material

and hence, the Court below had totally erred in placing the reliance on the decision in Mudunuri Suryanarayanaraju Vs. Korukonda Apparao, in

this regard. Learned Counsel also had contended that the evidence of P.W. 1 is clear and categorical relating to the relationship of landlord and

cultivating tenants and hence, the Court below had totally erred in dismissing the suits. Learned Counsel also had drawn my attention to paragraph

6 of the Judgment, wherein it was contended by the learned Counsel for the plaintiff that the title of the plaintiff-choultry had been already declared

in LOC 701/ RZO/75, dated 15-2-1993 by the tand Reforms Tribunal, Kakinada. The learned Counsel also had taken me through paragraphs 9

to 11 and 15 to 17 of the impugned Judgment and had pointed out how the Court below had not properly appreciated the evidence available on

record and how the approach of the Court below is totally erroneous even in appreciating the question of burden of proof involved in the matters.

5. Heard the learned Counsel for the petitioner in these matters at length and perused the material available on record in all the Civil Revision

Petitions.

6. The suits are filed by the revision petitioner-plaintiff institution for recovery of arrears of rent from the cultivating tenants relating to the

agricultural lands. Section 23 of the Act dealing with return of plaints in suits involving questions of title reads as follows:

23. Return of plaints in suits involving questions of title:

(1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small

Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court

may at any stage of the proceeding return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under Sub-section (1), it shall comply with the provisions of the second paragraph of Section 57 of the CPC and

make such order with respect to costs as it deems just, and the Court shall, for the purposes of the Indian Limitation Act, 1963, be deemed to

have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

7. On perusal of the evidence available on record, except just denying the title, the alleged tenants, i.e., respondents -defendants in these Civil

Revision Petitions had not produced any independent material. Be that as it may, now the question is whether the suits of this nature are cognizable

by the Principal Junior Civil Judge on small cause side or these suits should have been filed for recovery of arrears of rent relating to agricultural

lands on original side. The Second Schedule of the Act deals with suits excepted from the cognizance of a Court of Small Causes. The Second

Schedule of the Act should be read along with Section 15 of the Act, which deals with cognizance of suits by Court of Small Causes. Section 15

of the Act reads:

15. Cognizance of suits by Court 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.

8. Section 16 of the Act, which deals with exclusive jurisdiction of Courts of Small Causes, reads:

16. Exclusive jurisdiction of Courts of Small Causes: Save as expressly provided by this Act or by any other enactment for the time being in force

a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the

Court of Small Causes by which the suit is triable.

9. Now coming to Clause (sic. Article) (8) of the Second Schedule of the Act, the provision specifies as follows:

(8) a suit for the recovery of rent, other than house rent, unless the Judge of the Court of Small Causes has been expressly invested by the State

Government with authority to exercise jurisdiction with respect thereto.

10. Learned Counsel was unable to bring to my notice any such power conferred on the Court of Small Causes by the State Government to deal

with such disputes. Hence, I am of the opinion that the learned Principal Junior Civil Judge, Razole could have entertained these suits on original

side instead of entertaining these suits on small cause side. It is also brought to my notice that if the revision petitioner-plaintiff institution is directed

to file suits afresh, then the question of limitation also may be involved. In the facts and circumstances of the case, I am of the considered opinion

that the impugned Judgments in all these Civil Revision Petitions are liable to be set aside and the matters are to be remitted back to the Principal

Junior Civil Judge, Razole with direction to convert these Small Cause Suits into Suits on original side in the interest of justice and then after

numbering the suits on original side, issue notices to the respective respondents-defendants in all these suits and proceed with such original suits in

accordance with law. Accordingly, the impugned judgments are set aside and the matters are remanded to the Principal Junior Civil Judge, Razole,

as stated above.

11. The Civil Revision Petitions are allowed to the extent indicated above and the matters are remanded to the Principal Junior Civil Judge, Razole.

However, in the facts and circumstances of the case, there shall be no order as to costs.