Kuppa Viswapathi Vs Kuppa Venkata Krishna Sastry

Court: Andhra Pradesh High Court

Date of Decision: Feb. 20, 1962

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 6 Rule 7, 109
Constitution of India, 1950 â€" Article 133
Hindu Succession Act, 1956 â€" Section 14
Specific Relief Act, 1963 â€" Section 42

Citation: AIR 1963 AP 9

Hon'ble Judges: P. Chandra Reddy, C.J; Kumarayya, J

Bench: Division Bench

Advocate: P.P. Surya Rao, for the Appellant; R. Rajeswara Rao and P.L.N. Sarma for M. Venkata Rao, for the Respondent

Final Decision: Allowed

Judgement

Chandra Reddy, C.J.
This is an appeal under Clause 15 of the Letters Patent against the judgment of Sanjeeva Row Nayudu, J. in Appeal

Suit No. 184 of 1957.

2. The facts of the case lie in a very narrow compass and are not in dispute. O. S. No. 25 of 1956 on file of the Subordinate Judge''s Court, Tenali

was instituted by one Kuppa Venkata Krishna Sastri claiming to be the reversioner to the estate of one Kuppa Lakshminarayna, who died in or

about the year 1926, leaving behind him his widow, Lakshmi Narasamma, questioning the factum and validity of the adoption of Viswapathi, the

appellant herein, made by Lakshmi Narasamma on 27-8-1953.

3. To this suit were impleaded the adopted son as the first defendant and the adoptive mother as the second defendant.

4. Pending the suit, the Hindu Succession Act (XXX of 1956) came into force (17-6-1956). By virtue of Section 14 of that Act, the property

possessed by a female Hindu, whether acquired before or after the commencement of the Act, became her absolute property.

5. Taking advantage of this provision, the defendants inter alia raised the defence that the suit was not maintainable, as a reversioner could not

challenge the adoption on any ground since the adoptive mother had become a full owner of the property by operation of the Hindu Succession

Act.

6. As a sequel to this defence, the plaintiff filed a rejoinder pleading that as the widow Lakshmi Narasamma, had made a gift of her property

sometime in December, 1953 and before the Hindu Succession Act came into force, the widow could not derive any benefit from the Act and as

such it was competent for the plaintiff to question the adoption.

7. The trial Court agreeing with the contention urged on behalf of the defendants, dismissed the suit, as, in its opinion, no flew plea could be raised

in the rejoinder and since no attempt was made to have the plaint amended introducing the allegation that the alienation made by the widow before

the passing of the Hindu Succession Act was not relevant. The Subordinate Judge did not go into the question of the factum and validity of

adoption or the alienation alleged to have been made by the second defendant.

8. On appeal filed by the aggrieved plaintiff to this Court, Sanjeeva Row Nayudu, J., reversed the decision of the trial Court in the view that if the

gift was made prior to the inauguration of the Hindu Succession Act, the Act would not be of any avail to the defendants, and, consequently, the

declaration that there was no adoption either in fact or in law was sustainable. In that view, he remanded the case to the lower Court for fresh

disposal. It is this decision of the learned Judge that is now under appeal at the instance of the first defendant.

9. A preliminary objection was raised by Sri Rajeswara Rao, learned counsel for the respondent, that no appeal would lie against the order in

question, as it did not amount to a "judgment" within the sweep and range of Clause 15 of the Letters Patent. The chief ground urged by the

learned counsel for the respondent is that an order of remand could not be invested with the character of "judgment" as it had not put an end to the

litigation. We do not think that we could accede to this proposition. It is now a generally accepted concept that any adjudication, which puts an

end to a suit or proceeding so far as the Court before "which the suit or proceeding is pending is concerned, or the order which affects the merits

of the controversy between the parties, is a "judgment".

10. The test propounded by the Full Bench of the Madras High Court in Tuljaram Row v. Alagappa Chettiar 21 MLJ 1 (FB) which has been

adopted by several of the High Courts as the correct one, is as follows :

If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or

proceeding so far as the Court before which the suit or proceeding is pending is concerned or if its effect, if it is not complied with, is to put an end

to the suit or proceeding, I think the adjudication is a "judgment" within the meaning of the clause.

11. This is also the principle enunciated by another Full Bench of the Madras High Court in Central Brokers Vs. Ramnarayana Poddar and Co., .

Referring to 21 MLJ 1 (FB), Govinda Menon, J., who wrote the leading opinion, stated that the principles adumbrated in that decision were not

dissented from so far, and therefore, he proposed to accept the same as binding on the Full Bench, The dictum laid down by a Full Bench of the

Nagpur High Court in Manohar v. Baliram ILR (1952) Nag 471 at p. 523 : AIR 1052 Nag 357 at p. 376 is to a similar effect. Observed

Hidayatullah J. thus, who gave the leading opinion in that case :

Where the Court merely remits an issue for trial or orders that some evidence be taken, it is a progression of the suit but the order itself does not

amount to a judgment. But where the Court sets aside a decree which decides the controversy, and making a binding order, sends the case back

for decision in the light of its remarks, the order must be treated as a judgment.

It is true that Mudholkar J. struck a dissenting rote but Sinha C. J. agreed with the view expressed by Hidayatullah J.

12. The doctrine laid down in Sital Din and Others Vs. Annant Ram accords with this. There, it was laid down that an appeal u/s 10 of the Letters

Patent of the Allahabad High Court, which corresponds to Clause 15 of the Letters Patent of the Bombay, Madras and Calcutta High Courts, lay

against an order which finally and effectively disposes of the appeal, as it amounted to a "judgment". To the same effect are the rulings of the Patna

High Court in Ajit Chaudhuri Vs. Janak Lal Chaudhury and Others, and Ruldu Singh v. Sanwal Singh ILR 3 Lah 188 : AIR 1922 Lah 380). It is

unnecessary to multiply citations on this topic. Suffice it to say that an order of remand, which sets aside a decree which a litigant had obtained in

his favour, must be treated as a "judgment". If a decision effectively disposes of a suit or proceeding, it is a "judgment" within the purview of

Clause 15 of the Letters Patent.

13. Undeniably, an appeal is a proceeding. In the instant case, the appeal is finally disposed of and there is nothing further to be done in regard

thereto. So far as this Court is concerned, the proceedings have been terminated. In order to constitute a "judgment" within the ambit of Clause

15, it is not essential that it should wholly put an end to the litigation, and it need not possess the attributes of a final order, as contemplated by

Section 109 C. P. C. or Article 133 of the Constitution. We need not, therefore, deal with the decisions bearing on the controversy as to what is a

final order within the meaning of those provisions.

14. Reliance was placed by Sri Rajeswara Rao, learned counsel for the respondent, on a judgment of a Division Bench of the Madras High Court

in A.B.M.S. Mohamed Ali Maracoir and Others Vs. P.S.N.S. Ambalavana Chettiar, But that case is clearly distinguishable and has no analogy

here. There, a finding was called for on a particular issue, while the appeal was retained on the file of the High Court. That being the position, the

appeal pending in the High Court was not terminated. It was in those circumstances that the learned Judges ruled that the order calling for a finding

was not a "judgment", as contemplated by Clause 15 of the Letters Patent.

15. Applying the criteria indicated above, there can be little doubt that the order of the learned Judge amounted to a "judgment" within the mischief

of Clause 15 of the Letters Patent. Undeniably, the appeal was put an end to by that order. Moreover, there is an adjudication on the question as

to the maintainability of the suit. It is only this determination that has necessitated the calling for a finding on the question of adoption. The learned

Judge, by his order, has undone the decree which the appellant has obtained in the trial Court. For these reasons, we cannot subscribe to the view

that was sought to be pressed upon us by the learned counsel for the respondent.

16. We, therefore, find it difficult to give effect to the preliminary objection. It is therefore, overruled.

17. We will now proceed to examine the merits of the appeal. The short question that calls for decision is whether the suit giving rise to this appeal

is sustainable. The answer to this depends upon what the impact of Section 14 of the Hindu Succession Act on the present suit is; in other words,

whether the widow prescribes to an absolute title to the property by reason of Section 14 and consequently the reversioner is disentitled to

maintain the suit. It is not disputed that a female Hindu could not derive any advantage from Section 14, if she had parted with her interest in the

limited estate before the commencement of the Act. To attract the applicability of Section 14, she must be in possession of the property at the time

of the coming into force of the Hindu Succession Act. It is only then that her limited estate would be enlarged and she would become the full owner

thereof. In such an event, no claim could be put forward by any person to that estate as the reversioner of the late male-holder. As pointed out by

their Lordships of the Supreme Court in Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others, Section 42 of the Specific

Relief Act, illustration (f) would be of no avail to a reversioner, since the right of a reversioner as one of the heirs u/s 42 is limited to the question of

preserving the estate of a limited owner for the benefit of the entire body of reversioners but as against the full owner the reversioner has no such

right. But the situation would be different if she ceased to hold and possess the properties on the date of the commencement of the Act.

18. In the light of the principles enunciated above, we have to consider whether the widow, who is said to have adopted the first defendant, can be

said to have been in possession and enjoyment of the property so as to fall within the purview of Section 14 of the Hindu Succession Act. For this

purpose, we have to scan the recitals in the plaint. It is stated in the plaint that the widow of Lakshminarayana i.e., the second defendant

succeeded to all the properties, movable and immovable as his heir, and is now in possession of the same in widow''s estate."" It is seen the plaintiff

has definitely stated that the widow was in possession of the property of the last male-holder at the time of the presentation of the plaint. There is

nothing to indicate that she lost possession of the property subsequent to the filing of the suit and she had divested herself of the property and,

therefore, could not claim the benefits of Section 14 of the Hindu Succession Act. On the basis of the averments in the plaint, the only conclusion is

that Section 14 comes into operation in regard to the estate of Lakshminarayana, which was in the enjoyment of his widow.

19. If the matter had stood there, there would have been no scope for the contention that Section 14 would be unavailable to the defendants. As

already stated, the defendants taking advantage of the Hindu Succession Act, raised the defence that Section 14 was a bar to the suit. In order to

get over this difficulty, the plaintiff filed a rejoinder pleading that the second defendant made a gift of the property on 24-12-1953 in favour of her

uncle''s son, Chintalapati Purushotham Sastry, and therefore it was plain that she was not and could not be ""possessed of"" her husband''s

properties either on the date of the Act or before or afterwards. It is noteworthy that no reference at all was made to the gift deed in the plaint.

Further, a gift, under law, is not effective unless it is accompanied by delivery from the donor to the donee. Therefore, mere execution of a

document would not divest a Hindu widow of her limited estate. It is only when effect is given to it that she would be disentitling herself to the

benefits of Section 14. It is to be noticed here that the plaintiff does not assert even in the rejoinder that the widow after gifting the property had put

the donee in possession of it but he merely states the effect of the gift deed by introducing the recital that it was plain that she was not and could not

be ""possessed"" of her husband''s property. If, however, the rejoinder seeks to say that consequent upon the execution of the gift, the second

defendant lost possession of the property that would be inconsistent with the recitals in the plaint that the widow was in possession of the property

at the time of the filing of the suit.

20. It is now well settled that a rejoinder cannot make a departure from the plea put forward in the plaint. The plaintiff cannot set up facts in the

rejoinder which are inconsistent with those in the plaint. This result flows from Order 6, Rule 7 C. P. C. which says :

No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous

pleadings of the party pleading the same.

Thus, it is manifest that Order 6, Rule 7 C. P. C., operates as a complete bar to the plaintiff making a statement in the rejoinder inconsistent with

the statement of claim in the plaint. It is not disputed on behalf of the respondent that it is not permissible for the plaintiff to raise a new plea in the

rejoinder which is opposed to the one in the plaint. As we have already remarked, it was categorically stated in the plaint that the second defendant

was in possession of the property. It is not as if the plaintiff was alleging fresh facts as affording an answer to the defence. That being the real

position, the trial Court was justified in ignoring the new ground of claim urged in the rejoinder.

21. Sanjeeva Row Nayudu, J. did not examine the position with reference to the allegations in the plaint. He proceeded on the assumption that if

the gift deed was valid, Section 14 of the Hindu Succession Act would not help the defendants and, consequently, the ""validity of Ex. A-1 was

very material and germane to the question whether the Hindu Succession Act could at all be applied to this case."" The plaintiff laid the present

action for a declaration that there was, in fact, and in law no adoption at all. It is not disputed that the plaintiff in his capacity as the reversioner had

brought this action though the learned Judge had observed that there is no question of any reversioner bringing the suit in this case. If the second

defendant was in possession of the property at the time of the Hindu Succession Act came into force and consequently her limited estate was

enlarged, there was no question of preserving the estate for the benefit of the reversioner. It was open to her to deal with her property in any

manner she liked and it was not competent for the plaintiff to question the factum and validity of the adoption. It follows that the suit was rightly

dismiss-Mi by the trial Court and the judgment of Sanjeeva Row Nayudu, J., setting aside that decision cannot be sustained.

22. In the result, the appeal is allowed. Parties will bear their own costs throughout.