

## M/s. Aquadev India Ltd. Vs Kode Basava Venkateswara Rao and another

**Court:** Andhra Pradesh High Court

**Date of Decision:** Oct. 12, 2011

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 2(2)

**Citation:** (2012) 1 ALT 699

**Hon'ble Judges:** L. Narasimha Reddy, J

**Bench:** Single Bench

**Advocate:** V. Hari Haran, for the Appellant;

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The plaintiffs, in an unnumbered suit presented in the Court of the Principal Senior Civil Judge, Ongole, filed this

revision petition feeling aggrieved by the order, dated, 04-07-2011, passed by the trial Court.

2. The 1st respondent filed O.S No.10 of 1998 against the petitioner for recovery of a sum of Rs.6,61,027/-as arrears of salary. An ex parte

decree was passed in the suit on 17-04-2003. Based on that decree, the 1st respondent filed E.P. No.33 of 2003 and got attached an extent of

Acs.6.20 cents of land owned by the petitioner. The property was brought to sale and the 2nd respondent emerged as highest bidder.

3. The petitioner contends that it was under liquidation as a result of an order of this Court in C.P. No.84 of 1996, and that O.S. No.10 of 1998

filed in the Court of the Principal District Judge, Ongole, was not maintainable, when liquidation proceedings were in progress. Pleading that the 1st

respondent played fraud on it and the trial Court, petitioner filed the present suit with a prayer to declare that the decree and judgment in

O.S.No.10 of 1998, dated 17-04-2003, and consequential Execution Proceedings are null and void and for permanent injunction to restrain the

respondents herein from interfering with its possession and enjoyment of the suit schedule property.

4. The office of the trial Court raised an objection as to the maintainability of the suit. On the insistence of the petitioner, the trial Court heard the

matter at length. Ultimately, it took the view that the suit is not maintainable, particularly, when the Execution Proceedings are pending in the Court

of the District Judge. Through the order under revision, the plaint was rejected.

5. Sri V. Hari Haran, learned counsel for the petitioner submits that the decree obtained by playing fraud on the Court is a nullity, and even if a

decree was obtained from a superior forum by playing fraud, a suit for annulling the same can be filed in an inferior forum, depending upon the

valuation of the subsequent suit. He placed reliance upon the judgment rendered by the Calcutta High Court in Abdul Muzumdar and others v.

Mahomed Gazi Chowdhry and anr. 1984 ILR 21 CAL 605

6. There is a formidable objection for the maintainability of the CRP itself. Through the order under revision, the trial Court rejected the plaint and

a decree was drawn. Section 2(2) CPC directs an order rejecting the plaint shall be deemed to be a decree and it is only a regular appeal that

needs to be filed to challenge an order rejecting the plaint.

7. A revision cannot be filed against such decrees. The trial Court was not unequivocal in its findings. However, this Court is not inclined to reject

the revision as not maintainable on account of a fact. The principal ground on which it rejected the plaint is that it is filed for the relief of declaration

that a decree in O.S. No.10 of 1998 at a time when E.P. No.33 of 2003, filed for execution thereof, was pending in the District Court. If this were

to have been the objection, the trial Court ought to have returned the plaint for it to be presented before a proper Court and not rejected the plaint.

8. Coming to the merits of the matter. The petitioner alleged that the 1st respondent committed fraud on the Court, which decreed O.S.No.10 of

1998 and accordingly, wanted the decree therein to be set aside. It is true that if a decree has been obtained by fraud, a separate suit can certainly

be filed to set aside the same. The suit for such a relief has to be presented in the Court of competent pecuniary and territorial jurisdiction and it is

not necessary that must be filed in the same Court, which passed the decree that is sought to be set aside.

9. In a given case, a suit can be filed in a Court of lowest pecuniary jurisdiction for setting aside the decree passed by a Court of Senior Civil

Judge, District Judge or High Court and even the Supreme Court. Whether or not, the decree sought to be set aside was obtained by fraud, is a

question of fact and that has to be pleaded and established by the party pleading it.

10. However, one important aspect needs to be taken into account. The facility to file a separate suit to set aside the decree and judgment passed

in another suit is available only to a person who was not a party to the decree sought to be set aside. If he happens to be a party to the suit in

which the decree was passed, he has to avail further remedies before the very Court, which passed the decree, or in the Superior Courts by filing

appeal or revision. A person, who has suffered a decree, does not have a right to challenge that decree by filing a separate suit. If such a course is

permitted, he would be able to deprive the benefit of the decree in a suit to the decree holder therein by filing a separate suit after losing in every

forum. Law does not permit such a course of action.

11. Hence, the There Civil Revision Petition is dismissed. It is left open to the petitioner to pursue the remedies vis-à-vis the decree in O.S.

No.10 of 1998 in E.P. No.33 of 2003 in accordance with law. There shall be no order as to costs.