
(2011) 02 AP CK 0034

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 5212 of 2010

Manchukonda Venkata
Jagannadham

APPELLANT

Vs

Chettipalli Bullamma,
Chettipalli Sankara Rao
and Radha Soami
Satsang Beas

RESPONDENT

Date of Decision: Feb. 25, 2011

Acts Referred:

- Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Section 20
- Andhra Pradesh Civil Courts Act, 1972 - Section 10, 11, 11(2), 3, 3(2)
- Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 - Section 8
- Arbitration and Conciliation Act, 1996 - Section 34
- Bangalore City Civil Courts Act, 1979 - Section 5(2)
- Civil Procedure Code, 1908 (CPC) - Section 2(4), 24, 24(3), 3
- Trade and Merchandise Marks Act, 1958 - Section 105
- Trade Marks Act, 1999 - Section 73

Citation: AIR 2011 AP 104

Hon'ble Judges: Samudrala Govindarajulu, J

Bench: Single Bench

Advocate: K.V. Subrahmanya Narusu, for the Appellant; A. Vanisri and V. Ravinder Rao for Respondents 1 and 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Samudrala Govindarajulu, J.

This revision petition is filed questioning order dated 01.10.2010 passed by the Principal

District Judge, Visakhapatnam in T.O.P. No. 1077 of 2010 withdrawing and transferring O.S. No. 268 of 2006 from the file of VII Additional District Judge (Fast Track Court) Visakhapatnam to the file of II Additional District Judge, Visakhapatnam where O.S. No. 151 of 2006 is pending. Impugned order was passed by the Principal District Judge in exercise of power u/s 24 of Code of Civil Procedure.

2. Main contention urged by the Petitioner's counsel is that general power of transfer and withdrawal u/s 24 of the Code of Civil Procedure, 1908 vested in the District Court can be exercised in respect of any suit, appeal or other proceeding pending in any Court subordinate to it and not in respect of a matter pending in the Court of an Additional District Judge which is not a subordinate Court to the District Court. On the other hand, the Respondents' counsel supported the impugned order passed by the Principal District Judge, Visakhapatnam on the basis of Section 24(3)(a) by contending that the Court of Additional District Judge is deemed to be subordinate to the District Court.

3. For appreciation of respective contentions of both the counsel, a reference to Section 24 CPC has to be made invariably; and it reads thus;

24 General power of transfer and withdrawal:

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion-without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding in any court subordinate to it; and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under Sub-section (1), the Court which "[is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either re-try it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.)

(4) The Court trying any suit transferred or withdrawn under this section from a court of small causes shall, for the purposes of such suit, be deemed to be a court of small causes.

(5) A suit or proceeding may be transferred under this section from a court which has no jurisdiction to try it.

4. Clause (a) of Sub-section (3) deals with Courts of "Additional and Assistant Judges" and states that the said Courts are deemed to be subordinate to the District Court. The Petitioner's counsel contended that the said clause does not deal with Court of "Additional District Judge" and speaks of only a Court of "Additional Judge". According to the Petitioner, "Additional Judge" is entirely different from "Additional District Judge" and therefore Clause (a) of Sub-section (3) did not deem a Court of Additional District Judge subordinate to the District Court. It is contended that Courts of Additional Judges and Assistant Judges functioned in the City Civil Court unit and not in any District other than City Civil Court and City Small Causes Court, Hyderabad.

5. The Andhra Pradesh Civil Courts Act, 1972 was passed to consolidate and amend the law relating to the civil Courts subordinate to the High Court in the State of Andhra Pradesh. Section 3 of the A.P. Civil Courts Act deals with establishment of a City Civil Court for the District of Hyderabad. As per Section 3(2) of the said Act, the City Civil Court existing on the date of commencement of that Act was deemed to have been established under Sub-section (1) thereof. Section 4 of the said Act prescribes that one Chief Judge of the rank of District Judge and such other number of Additional Chief Judges of the rank of a District Judge and such number of Additional Judges of the rank of the Subordinate Judge and such number of Assistant Judges of the rank of the District Munsif have to be appointed by the Government in consultation with the High Court to the City Civil Court. Subsequently by the A.P. Act 29 of 1997, the nomenclature of the Additional Judges and Assistant Judges occurring in Section 4 was amended as Senior Civil Judges and Junior Civil Judges respectively. The said amendment in the nomenclature took place while adopting uniform terminology of the designations of the Subordinate Courts in the State. Even in the districts other than the district of Hyderabad, Courts of Subordinate Judge and District Munsif are renamed as Courts of Senior Civil Judge and Junior Civil Judge respectively. It is contended that Additional and Assistant Judges referred in Section 24(3)(a) CPC are those Courts which have been in existence in the City Civil Court unit of the District of Hyderabad and that it has no application in the case of Courts functioning in other districts than Hyderabad.

6. The Single Judge of the Karnataka High Court in *Sathya Shree v. M. Kumreshan* 1999 AIHC 3366 interpreted Section 24(3)(a) CPC to the effect that the said provision deems Court of Additional District Judge to be subordinate to the Principal District Judge, by observing as follows:

Section 24(3)(a) of the Code of Civil Procedure, also introduces a deeming clause that Courts of additional and Assistant Judges shall be deemed to be subordinate to the District Court. If additional District Judges can be deemed to be subordinate to the Principal District Judge for the purpose of distribution of work and transfer of case u/s 24 of the Code, in my opinion the same will be the position of other Judges of the City Civil Court. The principal City Civil Judge may make such arrangement as he thinks fit for the transfer and distribution of the work of the City Civil Court among other Judges. In this view of the matter, in my opinion it cannot be said that the principal City Civil Judge had committed any jurisdictional error or acted in excess of jurisdiction when it passed the impugned order. The Principal City Civil Judge, Bangalore, has got full power to transfer the case u/s 24 of the CPC read with Section 5(2) of the Bangalore City Civil court Act, 1979.

In the light of the above observations of the Karnataka High Court, this Court deems it appropriate to refer relevant provisions of the A.P. Civil Courts Act, 1972 together with provisions of CPC with regard to the subordination of Courts.

7. Section 2(4) CPC defines "District" and "District Court" in the following terms:

(4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court;

Under Section 10 of the A.P. Civil Courts Act, District Courts are established for each district and a District Judge is appointed for each district court. Section 10 reads as follows:

10. Establishment of District Courts:

(1) The Government may, after consultation with the High Court by notification, establish such number of District Courts as they may deem necessary and appoint a District Judge for each District Court.

(2) The Government may, from time to time, likewise abolish any District Court established under this section.

Section 11 of the A.P. Civil Courts Act deals with appointment of Additional District Judges and prescribes functions of Additional District Judges in the following terms:

11:Appointment of Additional District Judges

(1) Where, in the opinion of the High Court, the state of business pending in a District Court, so requires, the Government may, after consultation with the High Court, appoint one or more Additional District Judges to the District Court for such period as they may deem necessary.

(2) An Additional District Judge so appointed shall perform all or any of the functions of the District Judge under this Act or any other law for the time being in force which the District Judge may assign to him, and in the performance of those functions, he shall exercise the same powers as the District Judge.

On a combined reading of Sections 10 and 11, it follows that there is only one District Judge for each District Court and there may be one or more Additional District Judges functioning in the same District Court and that both the District Judge as well as the Additional District Judges perform the same functions and that the Additional District Judges exercise the same powers of the District Judge in respect of matters that may be assigned to the Additional District Judges by the District Judge.

8. Section 3 CPC prescribes subordination of Courts in the following manner:

3. Subordination of courts:

For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of District Court and every Court of Small Causes is subordinate to the High Court and District Court.

Section 3 CPC prescribes subordination of Courts for the purpose of the entire Code and does not make exception for the purpose of Section 24 CPC. Various High Courts in the country considered the position of Additional District Judge with reference to a District Judge and came to hold that the Court of Additional District Judge is not a Court inferior to that of the District Court presided over by the Principal District Judge/District Judge.

9. In *Western India Match Co., Ltd, Madras v. Haji Abbas Hussain Mullah Ehsan Ali* 1961 (2) AnWR 255 this Court held that the Courts presided over by the Chief Judge and the Additional Chief Judge, City Civil Court, Hyderabad are Courts of Coordinate jurisdiction and that G.O. Ms. No. 444 and 555 under which City Civil Court was constituted for Hyderabad District comprising of twin cities of Hyderabad and Secunderabad and six taluks, do not indicate that the City Civil Court whose presiding officer is the Additional Chief Judge is a Court inferior to the City Civil Court whose presiding officer is the Chief Judge and that therefore the Additional Chief Judge, City Civil Court had jurisdiction to try the suit u/s 73 of the Trade Marks Act.

The Allahabad High Court in [A.K. Enterprises, Agra Vs. Sterling Machine Tolls and another](#), placing reliance on the above reported decision of this Court as well as various other High Courts, came to the conclusion that intention of the legislature u/s 105 of the Trade and Merchandise Act, 1958 is to restrict institution of suit in a District Court and not in any Court inferior to a District Court and that such restriction by the legislature would not be defeated if the suit is tried by Additional District Judge appointed by the State Government after having consulted the High Court for the aid of District Judge for speedy disposal of cases pending with the District Judge. It was further observed therein that even if the District Judge takes aid from the Additional District Judge for the purpose of

institution of a suit, the same is liable to be instituted there and the same should be deemed to have been instituted in the Principal Civil Court of original jurisdiction as the Additional District Judge is part and parcel of the District Judge.

In *New Jaji Labour Society, Vijayawada v. Haji Abdul Rahaman Saheb* 1992 (1) AnWR 220 (DB), Division Bench of this Court while upholding making over of a case or proceeding arising u/s 8 of the A.P. Land Grabbing (Prohibition) Act, 1982 observed as follows:

Section 11(2) of the A.P. Civil Courts Act provides that an Additional District Judge shall perform all or any of the functions of the District Judge under the A.P. Civil Courts Act or any other law for the time being in force (which includes functions as Special Court under the Act), which the District Judge may assign to him and in the exercise of performance of those functions he shall exercise the same powers as the District Judge. Therefore, it follows that the functions of the District Judge as "Special Court" under the Act may be assigned to the Additional District Judge and in performance of his functions, the Additional District Judge has the same powers as the District Judge. Consequently he can try and dispose of cases or proceedings arising u/s 8 of the Act, which are made over to him by the District Judge.

Another Division Bench of this Court in *S. Srinivasa Rao v. High Court of A.P.* 1988 (2) ALT 586 held that appeals filed u/s 20 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 can be assigned and transferred by the Chief Judge, City Small Causes Court, Hyderabad to the Additional Chief Judges of the City Small Cause Court in exercise of power u/s 5 of the A.P. Civil Courts Act. It is observed therein that for the sake of identity and distinction the Additional Chief Judges are called as such.

In [Kvaerner Cementation India Limited, Mumbai Vs. Bharat Heavy Plate and Vessels Limited, Visakhapatnam](#), it was held by this Court that an application filed u/s 34 of the Arbitration and Conciliation Act, 1996 for setting aside award filed in District Court can be validly transferred to an Additional District Judge u/s 11 of the A.P. Civil Courts Act as the District Judge has power to make over or assign the cases instituted before him to the Additional District Judge.

10. Distribution of work u/s 6 of the A.P. Civil Courts Act by the Chief Judge, City Civil Court to the Additional Chief Judges and assignment of work or allotment of work by the District Judge u/s 11(2) of the A.P. Civil Courts Act are entirely different from power of the District Judge u/s 24 CPC for withdrawal and transfer of suits, appeals and other proceedings pending in subordinate Courts. Section 6 as well as Section 11(2) of the A.P. Civil Courts Act speak of Distribution and assigning of work. The said provisions conspicuously do not speak of withdrawal or transfer of cases from one Additional District Judge to another Additional District Judge or to the District Judge himself. The power of distribution or assignment of work under the A.P. Civil Courts Act is a power which is exercised by a District Judge or a Chief Judge suo motu on administrative side having

regard to pendency position of cases with each of the additional District Judges working in the District Court. Whereas the power u/s 24 CPC can be exercised by the District Judge either suo motu or on application by any party for any valid reason. But, the only condition when such power can be exercised by the District Court is that the suit or appeal or other proceeding is pending before a subordinate Court to the District Court. At this stage it may be noted that Section 24 CPC gives general power of transfer and withdrawal to the "District Court" as distinguished from "District Judge". It follows that an application u/s 24 CPC can be assigned by the District Judge to an Additional District Judge also as the Additional District Judge is a functionary in the District Court itself. In my opinion, the Karnataka High Court in Sathya Shree (1 supra) could not find the distinction between the power of distribution of a District Judge under the Civil Courts Act from the general power of transfer and withdrawal u/s 24 Code of Civil Procedure. Even though Section 24(3)(a) speaks about "Additional Judges", the Karnataka High Court equated the same with "Additional District Judges". With due respect, I am unable to introduce the word "District" in between the words "additional" and "judges" contained in Section 24(3)(a) Code of Civil Procedure.

11. The cardinal principle of interpretation of laws is that the Court cannot read anything into a statutory provision which is unambiguous. In [Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and Another](#), the Supreme Court on interpretation of statutes held:

13. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co, v. Yensavage* 218 FR 547...

15. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See [M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd.](#), The legislative casus omissus cannot be supplied by judicial interpretative process.

In [Satheedevi Vs. Prasanna and Another](#), the Supreme Court reiterated:

The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the

alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise - [Kanai Lal Sur Vs. Paramnidhi Sadhukhan](#), . The other important rule of interpretation is that the Court cannot rewrite, recast or reframe the legislation because it has no power to do so. The Court cannot add words to a statute or read words which are not therein it. Even if there is a defect or an omission in the statute, the Court cannot correct the defect or supply the omission. [Union of India and another Vs. Deoki Nandan Aggarwal](#), , [Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another](#),

12. In the context of occurrence of the phrase "Additional Judges" in Section 24(3)(a) Code of Civil Procedure, this Court is of further opinion that the said phrase cannot be interpreted as "Additional District Judges". Section 24(3)(a) CPC speaks about Assistant Judges also along with Additional Judges. It can be nobody's case that there are any Judges termed as Assistant District Judges. The Additional Judges and the Assistant Judges referred in Clause (a) of Sub-section (3) of Section 24 are those Judges who worked with the said nomenclature in the City Civil Court unit.

13. No doubt, Section 24(3)(a) enacts a deeming provision to the affect that Additional and Assistant Judges are subordinate to the District Court. A deeming provision was described by Lord Asquith in *East End Dwellings Co. Ltd, v. Finsbury Borough Council* 1952 AC 109 in the following language:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it..... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

The Supreme Court in [Ittiam and Others Vs. Cherichi alias Padmini](#), termed the above famous dictum of Lord Asquith as locus classicus on statutory interpretation of deeming provisions.

The Privy Council in *Commissioner of Income Tax, Bombay v. Bombay Trust Corporation Limited* AIR 1930 PC 1954 observed that when a person is "deemed to be" something, the only meaning possible is that whereas he is not in reality that something, the enactment requires to be treated as if he were.

In [The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others](#), the Supreme Court held that when a statute enacts that something shall deemed to have been done, which in fact true was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full

effect must be given to the statutory fiction and it should be carried to its logical conclusion.

14. When neither Additional Judge nor Assistant Judge is having the status of the District Judge and when Additional Judge and Assistant Judge are in fact inferior to the District Judge who is named as Chief Judge in the City Civil Court unit prior to the A.P. Act 29 of 1997, the question of further deeming an Additional Judge and an Assistant Judge subordinate to the District Court may not arise.

In 1963 (1) Andhra Weekly Reporter 392 division bench of this Court repelling contention of the judgment debtor observed:

The First Additional Judge, City Civil Court, is not a separate Court. He is only one of the Judges of the City Civil Court. The decree was passed by the City Civil Court.

Perhaps to obviate such similar contentions in future, Section 24(3)(a) might have been enacted by way of an amendment in the year 1977.

15. In view of my above discussion, I have no hesitation to hold that the phrase "Additional Judge" contained in Section 24(3)(a) CPC cannot be construed as "Additional District Judge". It follows that the impugned order passed by the Principal District Judge, Visakhapatnam withdrawing and transferring O.S. No. 268 of 2006 from the Court of VII Additional District Judge (Fast Track Court), Visakhapatnam to the Court of II Additional District Judge, Visakhapatnam is without jurisdiction. In all propriety, the application u/s 24 CPC should have been filed before this High Court and not before the District Court for transferring a suit pending in an Additional District Court to another Additional District Court, as a Principal District Judge working in a District Court has no jurisdiction to entertain such a transfer petition u/s 24 Code of Civil Procedure.

16. Since this Court came to the conclusion that the Principal District Judge has no jurisdiction u/s 24 CPC to entertain the transfer application, this Court does not propose to express opinion on facts of both the suits in this revision petition to find out whether there are grounds for transfer as prayed for.

17. In the result, the Revision Petition is allowed setting aside order dated 01.10.2010 passed by the Principal District Judge, Visakhapatnam in T.O.P. No. 1077 of 2010.