

Ravindranath Vs. Rukminiammal

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Court : Karnataka

Decided On : Apr-04-1986

Reported in : ILR1986KAR2389

Judge : Venkatachala and ;Vithal Rao, JJ.

Acts : Karnataka High Court Act, 1961 - Sections 9; Code of Civil Procedure (CPC) - Order 43, Rule 1

Appeal No. : M.F.A. No. 630 of 1986

Appellant : Ravindranath

Respondent : Rukminiammal

Advocate for Def. : M.C. Ranganna, Adv. for R-1 and ;B.M. Chandrasekharaiah, Adv. for R-2

Advocate for Pet/Ap. : G. Lingappa, Adv.

Judgement :

ORDER

Venkatachala, J.

1. The appellant instituted a suit in the City Civil Court, Bangalore, established under the City Civil Court Act, 1979 ('the City Civil Court Act' for short), seeking

grant of a perpetual injunction against respondent-1 respecting an immovable property, the value of which was not less than Rs. 20,000/-. In that suit, he made an interlocutory application--I.A.II, under Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908 ('the Code' for short), seeking grant of temporary injunction. That application was rejected by an order made by the City Civil Court. The appellant has questioned the validity of that order before this Court by preferring an appeal under Rule 1 of Order XLIII of the the First Schedule to the Code.

2. Whether the powers of the High Court in relation to an appeal under Rule 1 of Order XLIII of the First Schedule to the Code, have to be exercised by a single Judge or by us, a Bench of two Judges, is a question which is required to be resolved by us because of a controversy raised in this regard by learned Counsel appearing for the contesting parties. As the said question has to be resolved with reference to the provisions of the Karnataka High Court Act, 1961 ('the High Court Act' for short), as they stand amended by the City Civil Court Act bearing upon it, we shall advert to them at the outset.

3. The preamble to the High Court Act states that it is an Act intended to make provisions for regulating the business and the exercise of powers of the High Court of the State of Karnataka in relation to the administration of justice and to provide for its jurisdiction. Section 2(3) of the High Court Act states that 'First Appeal' means an appeal which, under any law for the time being in force lies to the High Court from a judgment, decree or order, made by a subordinate Civil Court in the exercise of its original civil jurisdiction. Section 5 thereof, in so far as it is material, reads thus :

'First Appeals. -- Save as otherwise provided in this Act, all First Appeals. Criminal Appeals, and all cases referred to the High Court for confirmation of a sentence of death, shall be heard by a Bench consisting of not less than two Judges of the High Court :

Provided.....'

Then, Section 9 thereof, in so far as it is material, reads thus :

'Other powers of a Single Judge. -- The powers of the High Court in relation to the following matters shall be exercised by a Single Judge, provided that the Judge before whom the matter is posted for hearing may adjourn it for being heard and determined by a Bench of two Judges :--

(i).....

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(iv) appeals under Rule 1 of Order XLIII of the First Schedule to the Code of Civil Procedure, 1908 ;

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(xiii) all appeals against the decrees or orders passed by the City Civil Court or deemed to have been passed by the City Civil Court in suits and proceedings the value of which is less than rupees twenty thousand.'

4. It was contended for the respondent that the present First Appeal being one filed before the High Court under Rule 1 of Order XLIII of the First Schedule to the Code, under Clause (iv) of Section 9, the powers of the High Court in relation to such appeal have to be exercised by a single Judge, unless he directs that such powers shall be exercised by a Bench of two Judges. On the other hand, it was contended for the appellant that the powers of the High Court exercisable by a single Judge in relation to appeals against the decrees or orders passed by the City Civil Court or deemed to have been passed by the City Civil Court are to be confined to the suits and proceedings, the value of which is less than Rs. 20,000/-, placing reliance on Clause (xiii) of Section 9 of the High Court Act. In other words, the contention urged for the appellant was that the appeals against the decrees or orders of the City Civil Court not covered by Clause (xiii) of Section 9 of the High Court Act, cannot be regarded as First Appeals saved from the operation of Section 5 thereof and that hence a Bench consisting of not less than two Judges of the High Court has to hear the First Appeals as provided thereunder. In our view, the contention urged for the respondent deserves acceptance, while the contention urged for the appellant deserves rejection for the reasons which we

shall presently state.

5. Section 5 of the High Court Act, as appears therefrom requires hearing of all First Appeals, Criminal Appeals and certain other cases by a Bench consisting of not less than two Judges of the High Court, unless it is otherwise provided for under any other provision of that Act. Section 9 of that Act is a provision in that Act, which provides for hearing of certain First Appeals by a single Judge in the exercise of powers of the High Court, in that, Clause (iv) thereof specifically refers to appeals under Rule 1 of Order XLIII of the First Schedule to the Code. From this, it becomes clear that when any appeal under Rule 1 of Order XLIII of the First Schedule to the Code, which can only be a First Appeal against an order made by a subordinate Civil Court, lies to the High Court, power of the High Court to hear and determine such appeal shall be exercisable by a single Judge, unless such single Judge directs the hearing and determination of such appeal by a Bench of two Judges. Clause (iv) of Section 9 of the High Court Act does not make any distinction between an appeal from an order of a City Civil Court or an appeal from an Order of any other Civil Court. Though it can be said on the basis of Clause (xiii) of Section 9 of the High Court Act that all appeals against the decrees or orders passed by the City Civil Court or deemed to have been passed by the City Civil Court in suits and proceedings, the value of which is less than Rs 20,000/-, are to be Heard and determined by a single Judge while exercising the powers of the High Court, it is difficult to think that when an appeal to the High Court against an order of a Civil Court in a suit or proceeding, the value of which is not less than Rs. 20,000/-, lies to the High Court under Rule 1 of Order XLIII of the First Schedule to the Code, such appeal does not fall within the ambit of Clause (iv) of Section 9 of the High Court Act. The express language employed in Clause (xiii) of Section 9 of the High Court Act does not warrant such construction nor can such construction be implied from the language of that clause. All that could be said of the appeals, which lie to the High Court from orders of the City Civil Courts made in suits or proceedings, the value of which is not less than Rs. 20,000/-, is that they are appeals which are to be heard as provided for under Section 5 of the High Court Act, if they are not required to be heard by a single Judge of the High Court under any other provision of that Act, Hence, we are of the view that all appeals under Rule 1 of Order XLIII of the First Schedule to the Code, which lie to the

High Court against orders made by subordinate Civil Courts including the City Civil Court, immaterial of the value of the suit or proceeding in which such orders are made, shall be heard and determined by a single Judge of the High Court in exercise of the powers of the High Court, unless such Judge directs the hearing of any of those appeals to be heard by a Bench consisting of two Judges. From this view of ours, it follows that the present Miscellaneous First Appeal has to be heard by a single Judge of the High Court in exercise of the powers of the High Court conferred under Clause (iv) of Section 9 of the High Court Act.

6. We make an order accordingly.

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