

Ramunni Vs. Govindan

Ramunni Vs. Govindan

SooperKanoon Citation : sooperkanoon.com/722015

Court : Kerala

Decided On : Jul-12-1957

Reported in : AIR1959Ker329

Judge : Vaidialingam, J.

Acts : [Provincial Small Cause Courts Act, 1887](#) - Sections 25; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

Appeal No. : C.R.P. No. 1387 of 1954

Appellant : Ramunni

Respondent : Govindan

Advocate for Def. : A. Achuthan Nambiar, Adv.

Advocate for Pet/Ap. : M.C. Sreedharan, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Vaidialingam, J.

1. This is a Revision under Section 115 C.P.C. by the plaintiff in S.C.S. 323 of 1950, District Munsiff's Court Tellicherry to revise the judgment of the learned

Subordinate Judge, Tellicherry in A.S. 1/54 reversing the decree in S.C.S. 323/50.

2. The circumstances under which the said A. S. 1 of 1954 came to the file of the Subordinate Judge, Tellicherry are somewhat unusual and can be stated here briefly.

3. The petitioner before me was the defendant in O. S. 517/1950 on the file of the court of the District Munsiff, Tellicherry. It was filed by the respondent herein as plaintiff against the present petitioner for recovery of a sum of Rs. 385-15-0 stated to have been borrowed by the defendant including interest on the same and certain other expenses.

4. This suit O. S. 517/50 was contested by the petitioner herein on the ground that he had not borrowed any amount from the plaintiff therein and also contended that the plaintiff's case was false and had been filed only as a counter blast to his suit S.C.S. 323/1950.

5. The present petitioner had filed as plaintiff S.C.S. 323/1950 against the respondent herein for recovery of a sum of Rs. 144-13-3 on account of certain dealings stated to have taken place between them. This suit, in turn, was contested by the respondent herein.

6. As the petitioner and the respondent before me figured as plaintiff and defendant in the above original and small cause suit they appear to have agreed for having a joint trial or the two suits and common evidence was recorded in O. S.. 517 of 1950.

7. The learned District Munsiff dismissed O. S. 517/1050 (the respondent's suit) and decreed S.C.S. 323/1950 (the petitioner's suit).

8. Against the dismissal of his suit O. S. 517/1950, the respondent herein filed A.S. 348/1953 before the learned Subordinate Judge of Tellicherry. Against the decree passed in S.C. S. 323/1950 the respondent herein filed C. R. P. 1462/1951 to the High Court, Madras under Section 25 of Act IX of 1887, as he had no right of appeal,

9. It will be seen that S.C.S. 323/1950 was tried only as a small cause suit and a Revision against the said order was the only remedy available to the respondent herein. It appears that the High Court returned the C. R. P. 1462/1951 to the respondent herein for presentation to the District Court to be heard along with his other appeal A. S. 348/53 mentioned above. With great respect to the learned Judge, it is not known under what provision of law such an order returning the C. R. P. to the District Court was passed; Section 25 of the Act IX of 1887 gives power only to the High Court to entertain a Revision against a decree in a small cause suit and the District Court has no powers at all of either entertaining an appeal or a Revision,

The actual order of the learned Judge has not been placed before me. If I may say so with respect, if the learned judge thought that the C. R. P. in the High Court and the appeal pending in the District Court require to be jointly heard the proper order would have been to withdraw the appeal from the District Court to the file of the High Court to be heard and disposed of along with the C. R. P. The C. R. P. appears to have been re-presented in the District Court and it was registered as A. S. No. 392/1953 and ultimately transferred to the Subordinate Judge's Court where it was numbered as A. S. 1/1954, though no appeal is competent against the decree of the Small Cause Court.

10. The learned Subordinate Judge confirmed the decree in O. S. 517/1950 and dismissed A. S. 348/1953. No further proceedings have been taken against the decree in A. S. 348/1953.

11. The learned Subordinate Judge however reversed the decree in S.C.S. 823 of 1950 and allowed A. S. 1/1954. The plaintiff in S.C.S. 323/1950 has filed this Revision against A. S. 1/1954, Sub Court, Tellicherry.

12. Mr. Sridharan, learned counsel for the plaintiff-petitioner has contended before me that the judgment of the learned Subordinate judge in A. S. 1/1954 reversing the decision in S.C.S. 323 of 1950 is one passed without jurisdiction. His contention is that as there is no appeal provided under Central Act IX of 1887, the appeal to the lower appellate Court was incompetent and as such, the order of the lower court also is without jurisdiction. He also stated that the order of the High

Court returning C. R. P. 1462/1951 for presentation to the District Court will not confer any jurisdiction on the latter court when it really had none in law.

13. Mr. Atchuthan Nambiar, the learned counsel for the respondent has really no answer for. This contention excepting that he had filed a C. R. P. in the High Court and he had obeyed the order of the High Court in re-presenting the C. R. P. in the District Court. One can very well sympathise with Mr. Atchuthan Nambiar's attitude. But the position in law is that the judgment of the learned Subordinate Judge in entertaining the appeal A. Section 1/1954 is without jurisdiction and as such, it has to be set aside by this Court. It is not necessary to multiply the authorities on this point excepting to refer to the decision of the Full Bench of the Madras High Court in *Collipara Seetapaty v. Kankipati Subbayya*, 20 Mad LJ 718.

In that case the learned Subordinate Judge reversed in appeal a decision in a small cause suit tried by a Munsiff and when the matter came before the High Court in revision, the matter was referred to a Full Bench. Their Lordships of the Full Bench held that the appellate decision of the learned Subordinate Judge in that case was made without jurisdiction and in this view, their Lordships set aside the appellate judgment. Reference may also be made to the decisions in *Bandiram Mookerjee v. Purna Chandra Roy*, ILR 45 Gal 926 : (AIR 1918 Cal 435), *Somasundaram v. Muthumanicka* (Ananthakrishna Ayyar, J.), AIR 1933 Mad 714, *Maghi Mal v. Ganpat Rai*, AIR 1936 Lah 212, *Mt. Champa Debiv. Ram Chandra*, AIR 1937 Pat 136, *Arunagiri Goundan v. Rarnaswamj Pillai* 1941-2 Mad LJ 537 : (AIR 1941 Mad 867) and *District Board Tanjore v. Kuppuswami Konar*, 1947-1 Mad LJ 303 : (AIR 1947 Mad 382).

14. Applying these principles, it follows that the appeal A. S. 1/1954 on the file of the Sub-Court, Tellichery was incompetent and the decree and judgment passed thereon were passed without jurisdiction and that they ought to be set aside. In this view, I accordingly set aside the decree and judgment of the learned Subordinate Judge of Tellichery in A. S. 1/1954.

15. Mr. Achuthan Nambiar the learned counsel for the respondent has pressed before me that his client was not at fault in filing A. S. 1/ 1954 before the Subordinate Judge of Tellicherry. He also pressed before me that his client should

not be made to suffer by having no hearing on a C. R. P. which he had properly filed in the High Court and which would have been heard and disposed of on the merits, if the High Court had not returned the C. R. P. for presentation to the District Court. There is much force in the contention of Mr. Achuthan Nambiar. It is one of the cardinal principles of justice that a party should not suffer on account of the court's act or mistake. But the C. R. P. filed by him has become merged in the decree in A. S. 1/54 of the Sub Court, Tellicherry which I have now set aside as being without jurisdiction,

16. But in order to invoke the revisional jurisdiction of this Court it is not necessary that a party should apply to the Court. It has been held by a Bench of the Madras High Court in *Robert Fisher v. S. Kanakasabapathy Mudaliar*, 20 Mad LJ 722 that the High Court can suo motu consider whether the order of the trial court requires any interference. In that case, the District Court had entertained an appeal and reversed the decision of the District Munsiff, Their Lordships set aside the decree of the District Judge as having been made without jurisdiction. At p. 725 their Lordships observed :

'We then have the decree of the District Munsiff before us and the respondent asks us, in the circumstances of the case to satisfy ourselves whether it is right in law and if not, to make an order under Section 25 of Act IX of 1887. It is contended that we ought not to do so without an application. Section 25, however, does not require an application before action is taken. We think, we may, therefore, take the decree of the District Munsiff into consideration.'

In that case, after considering the decree of the District Munsiff their Lordships came to the conclusion that it was wrong and that it should be set aside. To similar effect is the decision in *Somasundaram v. Muthumanicka*, (Ananthakrishna Ayyar, J.) AIR 1932 Mad 714 and *Kallalagar Devasthanam Madura v. M. Baskaran Pillai*, 1942-2 Mad LJ 450 : (AIR 1942 Mad 741). Both these decisions lay down that in a proper case it is open to the High Court to interfere in revision suo motu even without any application by any party and consider the correctness or otherwise of the trial Court's order while setting aside the appellate order.

17. In view of the fact that in this case, the respondent is not to blame, I have exercised my powers suo motu under Section 25 of Act IX of 1887 and considered the correctness or otherwise of the decree against the respondent herein in S.C.S. 323/1950. After perusing the judgment and records, I do not see that the said decree requires any interference by me. As stated at the opening of the judgment S. C. Section 323/1950 was by. the petitioner herein against the respondent for recovery of a sum of Rs. 144--13--3 stated to be due on dealings.

The respondent contended that the dealings stated by the plaintiff are false. The learned District Munsiff has gone into the matter in great detail and after considering the oral and documentary evidence adduced in the case, has accepted the evidence of the plaintiff and come to the conclusion that the dealings mentioned in the plaint are true. He has also given valid reasons for negating the contention regarding the point of limitation raised by the defendant. Therefore, it follows that the decree in S. C. Section 323/50, District Munsiff's Court, Tellicherry does not require any interference by me.

18. In the result, the Civil Revision petition is allowed and the decree and judgment in A. Section 171954 Sub-Court, Tellicherry is set aside and the decree in S.C.S. 323/50, District Munsiff's Court Tellicherry, restored. Parties will bear their own costs in the C. R. P, and in A. S. 1/1954, Sub-Court, Tellicherry. The order as to costs in the small cause suit will stand.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com