

ANDHRA PRADESH HIGH COURT

Prabha Singh Surjit Singh Firm

Vs.

Sanka Narasinmha Rao

Civil Revn. Petn. No. 1055 of 1953, in S. C. Suit No. 370 of 1952

(Umamaheswaram, J.)

17.02.1956

ORDER

Umamaheswaram, J.

1. This Civil Revision Petition raises an interesting question of law. The petitioner herein filed S. C. No. 2602 of 1950 in the Court of Small Causes of Madras for recovery of the prices of goods supplied by him to the respondent herein. The respondent filed S. C. No. 586 of 1950 in the Court of the District Munsif of Bezwada against the petitioner herein for recovery of a sum of Rs. 82-2-3 being go-down charges, railway freight, demurrage, etc., paid by him. On the application of the petitioner, the suit filed in Bezwada was transferred to the Court of Small Causes, Madras, and numbered as Suit No. 2013 of 1952. Both the suits were tried together. The Small Cause Judge held that the Court had no jurisdiction to entertain Suit No. 2602 of 1950 as the cause of action had arisen only in Vijayawada and he directed the plaint to be returned for presentation to proper Court. In the suit which was transferred he held that the respondent was entitled to a decree for a sum of Rs. 20-12-3 by way of freight and demurrage charges. 1. The basis of the decree was that the respondent had rightly rejected the goods as they were not in accordance with the goods agreed to be sold. The petitioner thereupon presented the plaint in Sub-Court, Vijayawada, on 13th June 1952, and it was numbered as S. C. No. 370 of 1952.

2. A preliminary objection was raised by the respondent herein that the decision in S. C. No. 586 of 1950, District Munsif Court, Vijayawada, which was registered as S. C. No. 2013 of 1952 on the file of the Court of Small Causes, Madras, operated as *res judicata*. The Subordinate Judge upheld the plea and dismissed the suit. The petitioner had consequently filed the Civil Revision Petition to this Court.

3. The only question that has to be decided is, whether the decision of the Small Cause Judge, Madras, in S. C. No. 2013 of 1952, operates as *res judicata* or not. As the Small Cause Judge held that he had no jurisdiction to entertain S. C. No. 2602 of 1950, there was no validly instituted suit on the file of that Court. It was presented in the Court of the Subordinate Judge, Vijayawada, on 13th June, 1952. As held in *Ramaswami Aiyar v. Veerarayan Raja*¹ the presentation of the plaint to a Court

¹ AIR 1941 Mad 711

which has no jurisdiction to try the suit cannot be said to be the institution of the suit, even though the plaint had been accepted as being in order and registered. It was only when the plaint was presented to the Sub-Court at Vijayawada on 13th June 1952, that the suit must be taken to have been instituted. By that date, there was the decision of the Small Cause Judge, Madras, in S. C. No. 2013 of 1952, holding that the petitioner herein had committed a breach of the contract and that the respondent was entitled to reject the goods. It is well established that the expression 'former suit' under Section 11, Civil Procedure Code, means a previously decided suit - vide Mulla's Civil Procedure Code (12th edn., Vol. 1, p. 38). So, that decision would operate as *res judicata* under Section 11, Civil Procedure Code, as it was a decision rendered between the same parties in a former suit.

4. The next question that arises for consideration is, whether the Small Cause Judge, Madras, was competent to try and dispose of the former suit, viz., S. C. No. 2013 of 1952 which was transferred to that Court under Section 24, Civil Procedure Code, to be tried along with S. C. No. 2602 of 1950. Venkatasubba Rao, J., construed the terms of Section 24, Civil Procedure Code, in *Rajagopala Pandarathar v. Tirupathia Pillai*², and held at p. 425 that in regard to suits competency should not be understood in the sense of territorial or local competency. The same view was taken by the Allahabad High Court in *Kishore Lal v. Balkishan*³, Sulaiman, C. J., delivering the judgment, held as follows :

"The same words 'competent to try the suit' occur in Section 11, Civil Procedure Code, as also Section 15. It is quite clear that for purposes of *res judicata* it is not necessary that the two Courts must have concurrent territorial jurisdiction which depends entirely on the subject-matter in dispute. The provision in Section 15 would point to the same conclusion."

In an earlier part of the same judgment, the learned Chief Justice observed in construing the terms of Section 24, Civil Procedure Code, that the word 'competent' must be taken to refer to pecuniary jurisdiction. Sri Lakshminarayana referred to a Bench decision of the Allahabad High Court in *Ram Das v. Habib Ullah*⁴, held in the latter case in AIR 1932 Allahabad 660, that the earlier decision was wrongly decided. Collister, J., has taken the same view, in *Rang Lal v. Gajraj Singh*⁵, and held that competency in Section 11, Civil Procedure Code, has no reference to territorial jurisdiction. Following the above decisions I hold that the Small Cause Court, Madras, was competent to try the suit within the meaning of Section 11, Civil Procedure Code, as it had pecuniary jurisdiction though not territorial jurisdiction.

5. Sri Lakshminarayana contended that the decision in S. C. No. 2013 of 1952 would not operate as *res judicata* as both the suits were tried together and relied upon the Full Bench decision in *Pappammal v. Meenammal*⁶, That decision has really no application to the facts of this case. What was held in that decision was that the judgment not appealed against does not operate as *res judicata* when all the suits were tried together and disposed of by a common judgment, and an appeal is preferred as against the decree in one of those suits. The basis of that

² AIR 1926 Mad 421

⁴ AIR 1933 All 178 (1)

⁶ AIR 1943 Mad 139

³ AIR 1932 All 660. At p. 661

⁵ AIR 1939 All 202

decision was that there was an appeal pending to get rid of the very adjudication which was put

forward as constituting res judicata. In the instant case, no appeal or revision was filed as against the common judgment and the decision in S. C. No. 2013 of 1952 had become final. I agree with the view taken by the Court below that the decision operates as res judicata.

6. In the result, the Civil Revision Petition fails and is consequently dismissed with costs.

Revision dismissed.