

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

APPEAL SUIT No.652 of 1997

-

JUDGMENT:

Aggrieved by the judgment and decree, dated 25.03.1997, in O.S.No.03 of 1988 on the file of I Additional District Judge, East Godavari District, Rajahmundry, the defendants in the said suit filed the present appeal.

2. During pendency of the appeal, appellant No.1/defendant No.1 died and his legal representatives were brought on record as appellants 3 to 4.

3. Plaintiff filed the aforesaid suit for dissolution of partnership firm-Sri Srinivasa rice and flour mill, situated at Gontuvanipalem, Yeleswaram Taluq; for recovery of half share in the said rice mill and for rendition of account of income of the firm from 31.03.1980 till the date of dissolution of firm by the 1st defendant.

4. For convenience, the ranks given to the parties in the suit O.S.No.03 of 1988 on the file of I Additional District Judge, East Godavari District, Rajahmundry, will be adopted throughout the judgment.

5. Plaintiff and the defendants entered into partnership and a deed executed on 06.02.1980 for running Baby sheller rice and flour mill at Gontuvanipalem in Yeleswaram Taluq of Agency Area under the name and style of Sri Srinivasa rice and flour mill. As the 1st defendant was running short of capital, he offered partnership to the plaintiff to subscribe capital on condition that they became partners. The terms and conditions were reduced into writing and the original partnership deed was signed by the plaintiff, defendants and registered with Registrar of firms.

6. The 1st defendant was managing the business as per condition No.6 of the partnership deed and all partners shall contribute the capital. The net profit and loss of the firm shall be borne by the plaintiff and the defendants in the ratio of 50%, 25% and 25% respectively and the plaintiff's share is 50% and the defendants share is 25% each. While the matter stood thus, the 1st defendant, who is Managing Partner of the said firm, failed to render account of income of the business to the plaintiff every year as stipulated in the partnership deed. The 1st defendant developed grouse over the plaintiff and made the plaintiff and her husband, to leave that place due to fear and as such the plaintiff and her husband did not pursue the affairs of partnership concern. Taking advantage of inability of the plaintiff and her husband to take any action, the defendants utilized the profits without paying the share of profits to the plaintiff. Thus, the 1st defendant mismanaged the business and appropriated the profits for himself without rendering true and correct account of the business after dissolution of partnership firm. Hence, the suit.

7. The 1st defendant filed written statement and the same was adopted by the 2nd defendant. He contended that plaintiff filed a suit O.S.No.5 of 81 before Agent to the Government (District Collector), Government of A.P., East Godavari District, for the same reliefs, allowed the suit to be dismissed as withdrawn and accordingly, the said suit was dismissed. Therefore, the present suit is vexatious and baseless.

8. The Court has no territorial or inherent jurisdiction to entertain and try the suit. The partnership, dated 06.02.1980, is only a nominal transaction and never acted upon it. The business carried on under the name and style of Sri Srinivasa rice and flour Mill and its assets were exclusively belonging to the defendants. The plaintiff has not shared whatsoever in the said rice mill and she never invested any amount towards her share in the said rice mill. Therefore, there is no liability on the 1st defendant to render accounts of the income of the said mill to the plaintiff. The plaintiff filed the suit O.S.No.106 of 1981 before the District Munsif Court, Peddapuram, claiming decree for dissolution of partnership firm and simultaneously, the plaintiff has also filed a suit in O.S.No.60 of 81 before the District Munsif Court, Peddapuram, against 1st defendant seeking a decree for Rs.150/- on the basis of a promissory note, dated 15.03.1978. The 1st defendant, being the defendant in the said suit, filed written statement and contested those suits. In those

three suits, the plaintiff and the defendants settled all the disputes including the dispute relating to the partnership and the plaintiff agreed to withdraw all the above suits and accordingly, filed a Memo withdrawing all the three suits as adjusted outside the Court. The plaintiff also executed Khararunama in the year 1981 in favour of the defendants admitting that the rice mill, which is the subject matter of this suit, is the exclusive property of the defendants and plaintiff had not contributed anything towards capital or running capital and thereby she is not entitled to claim a share in the property and finally prayed to dismiss the suit.

9. Basing on the above pleadings, the trial Court framed the following issues:

- “1) Whether the plaintiff and defendants 1 and 2 constituted into a partnership firm under the name and style of ‘Sri Srinivasa Rice & Flour Mill, Gontuvanipalem?
- 2) Whether the plaintiff is having a share in the firm?
- 3) Whether the 1st defendant is liable for rendition of accounts of the firm under his management?
- 4) Whether this Court has no territorial jurisdiction?
- 5) Whether dismissal of suit O.S.No.5/81 on the file of District Collector, East Godavari operates as a Bar for the present suit?
- 6) Whether the partnership deed dated 06.02.1980 is only nominal and not intended to be acted upon as contended by the defendants?
- 7) Whether the compromise pleaded by the defendants in paras 7 and 8 of their written statements true, valid and binding upon the plaintiff?
- 8) Whether Khararunama dated 19.09.1981 is genuine, true, valid and binding on the plaintiff?
- 9) Whether the plaintiff’s claim is not barred by limitation?
- 10) Whether the suit is properly valued?
- 11) Whether the plaintiff is entitled for the reliefs of accounting and profits towards her half share?
- 12) To what relief?”

10. During trial, on behalf of the plaintiff, P.Ws.1 to 3 were examined and Exs.A.1 to A.5 were marked. On behalf of the defendants, D.Ws.1 and 2 were examined and

Exs.B.1 to B.13 were marked, besides marking Exs.X.1 to X.5.

11. Upon hearing argument and upon considering the oral and documentary evidence on record, the trial Court decreed the suit as prayed for, passing a preliminary decree.

12. Aggrieved by the said decree and judgment, the defendants in the suit filed the present appeal on various grounds, more particularly raising a specific contention that the trial Court has no jurisdiction since the property is situated within the limits of Agency area and Agent of the State alone is competent to try the suit.

13. The trial Court did not consider the earlier suit O.S.No.5 of 81 on the file of District Collector, East Godavari District and decreed the present suit. The Court below also ignored Exs.X.3 and X.4 without assigning any reason and thereby the suit is not maintainable.

14. The trial Court did not appreciate the oral and documentary evidence in proper perspective and prays to allow the appeal by setting aside the decree and judgment, dated 25.03.1997 in O.S.No.3 of 1998.

15. During course of argument, learned counsel for the appellants contended that the Civil Court has no jurisdiction to try the suit since the property is situated within the Agency area and it is governed by Agency Rules. Therefore, on this ground alone, the suit is liable to be dismissed. He further contended that the earlier suit O.S.No.5 of 1981 filed before Agent to the Government for the self same relief and withdrawal of the same is sufficient and in the said suit, no liberty was granted to the plaintiff to file a suit on the same cause of action under Order XXIII Rule 1 CPC and on this ground also the decree and judgment of the trial Court are liable to be set aside. Finally, he contended that when partnership firm was dissolved as per the circular issued by the Registrar of Firms, the question of dissolution of partnership again does not arise and hence, he prays to allow the appeal by setting aside the decree and judgment, dated 25.03.1997 in O.S.No.3 of 1988.

16. On the other hand, learned counsel for the respondents fairly conceded that the Civil Court has no jurisdiction since the property is situated within the territorial limits of Agent to the Government and drawn the attention of this Court to a judgment in **Madakam Venkateswara Rao Vs. Subordinate Judge, Kothagudem** and judgment in **Saini Lakshmi and another Vs. Bolliepalli Janardhan @ Janardhan Chary and others**. Therefore, in view of this controversy, it would suffice to decide the jurisdiction of Civil Court, in stead of deciding all other issues. However, the following are the points that arise for consideration:

1. Whether the Civil Court is competent to decide the suit pertaining to property situated in scheduled or Agency area, if so, the decree and judgment be sustained?
2. Whether the firm was already dissolved, if so, whether the decree for dissolution of the partnership firm be sustained?
3. Whether the plaintiff is entitled for recovery of share in the partnership firm and for rendition of accounts of business firm by the defendants?

17. **POINT No.1:**

The first and foremost contention raised by the learned counsel for appellants before this Court as well as trial Court is that the Civil Court at Rajahmundry is not competent to try and decide the suit since the property is situated within the territorial limits of Agent to the Government and the Agent of the State alone is competent. The first few sentences in the plaint itself show that the property is undisputedly within the limits of agency area and the Agency Rules alone are applicable to the suits filed in respect of properties situated within the agency area. The Andhra Pradesh Agency Rules, 1924 (for short, 'the Rules') are applicable to the suits pertaining to the properties situated in the Agency area. Rule 2 of the Rules deals with Valuation of the Suits. Rules 3 to 10 deal with jurisdiction of Courts including Agent of the Government, Agency Munsif etc. Rule 8 of the Rules created interdict directly on the jurisdiction of the Civil Courts or any other Courts.

18. The trial Court placing reliance on a Division Bench judgment of this Court in **Md.Azizuddin Vs. Ashekuddin**, held that the Civil Court has got jurisdiction since both parties are non-tribals. But, when the same question came up before the learned Single Judge of this Court in **Madakam Venkateswara Rao's case (1 supra)**, learned single Judge while dealing with various provisions of the A.P. Agency Rules at para 12 of the judgment observed as follows:

“It is submitted by the learned Counsel for the petitioners that the learned Judge Ms.Justice S.V.Maruthi in Nallaparaju Balabhadra Raju V. Datla Subhadrayamma, S.A.No.420 of 1988 dated 7-9-1994, held that the notification dated 30.10.1972 issued under Section 1 (3) of A.P. Civil Courts Act while bringing into force all the provisions of the A.P. Civil Courts Act in the whole of the State of Andhra Pradesh with effect from 1-11-1972 excluded the Scheduled Areas of the State, was not brought to the notice of the learned Judges in the case of Ashifaquddin (supra), and therefore, the judgment of the aforesaid Division Bench is per incurium. The learned Judge further held that in view of the notification dated 30.10.1972 underwhich the A.P. Civil Courts Act was not brought into force in the Scheduled Areas, the Subordinate Judge of Kothagudem has no territorial jurisdiction to try the suits in relation to the matters which arose in the Scheduled Areas irrespective of the fact whether the parties are tribals or non-tribals when the cause of action arises within the Scheduled Area.”

19. The notification, dated 30.10.1972 was not brought to the notice of the Division Bench of this Court in **Azizuddin's** case and hence, the judgment in the said case is *per incurium*. In view of notification issued by the Governor of Andhra Pradesh in G.O.Ms.No.1573, Home (Courts-A), Department, dated 30.10.1972, the Andhra Pradesh Civil Courts Act, 1972 is not made applicable to the territorial areas and thereby the Sub-ordinate Judge at Kothagudem has no territorial jurisdiction to try the suit which arises in the scheduled areas irrespective of the fact that the parties are tribals or non-tribals when the cause of action arises within the scheduled area.

20. Even in **Azizuddin's case**, the Division Bench of this Court held that if cause of action arose out of the territorial limits of agency area and when the parties are non-tribals, the Civil Court has got jurisdiction. But, the learned single Judge of this Court

did not accept the said contention. In **Venkateshwara Rao and six others Vs. the Sub-Judge, Khammam and another**, placing reliance on **Azizuddin's**, wherein the Division Bench of this Court held that Civil Courts have no jurisdiction to entertain a suit between the persons not belonging to the Scheduled Tribes in respect of the lands situated in Scheduled Areas of Telangana in the State of Andhra Pradesh, held that the Civil Court has no jurisdiction when the property is situated within the limits of agency area. The Division Bench of this Court proceeded on the analogy that the provisions barring the jurisdiction of civil Courts should be strictly construed and unless there is a specific provision barring the jurisdiction of the civil Courts, the Courts cannot infer bar of jurisdiction by a process of implied reasoning and there is no provision in the Agency Rules expressly barring the jurisdiction of Civil Courts in respect of suits relating to disputes arising between non-tribals, nor can it be necessarily implied that the jurisdiction of civil Courts is barred to try such suits, and observed that there are reasons to reject the contention.

21. In another judgment in **A.P.State Financial Corporation, rep. by its Senior Branch Manager Vs. Paida Jogaiah and others**, the learned Single Judge of this Court held that the object of the Act is to protect the interest of people living in the tribal areas, particularly, the Tribes; the *sine qua non* being the location of the property in dispute within the agency tract and finally concluded that in respect of the disputes in the Agency Area, the Agent of the State alone has got jurisdiction since the A.P. Civil Courts Act is not extended to the territorial areas and finally at para 11 it was held as follows:

“Thus, it gives rise to yet another facet of law. If the argument of the learned Counsel for the petitioner that the Agency Courts have no jurisdiction to entertain the suits is to be accepted, in view of the notification issued by the Government under Section 1 (3) of the A.P.Civil Courts Act on 30.10.1972, the Civil Courts also have no jurisdiction over the matters in scheduled areas. Thus, the respondent-plaintiff is left with no remedy. As such, looking from any angle, it cannot be said that the Agency Court has no jurisdiction to entertain the suit. As stated above the object of the Act is to protect the interest of people living in the tribal areas, particularly, the Tribes; the *sine qua non* being the location of the property in dispute within the agency tract. Therefore, the Court of Agent to Government, Khammam has jurisdiction to entertain and decide a suit of this nature instituted by a tribal against the State Finance Corporation. The Civil Revision Petition is devoid of merits and liable to be dismissed.”

22. Similar view was expressed in **Parameswara Veerraju Reddi Vs. State of A.P. and others** and in **V.Amos alias Ramulu and others Vs. P.Johnson another**. In view of law declared by the Courts consistently in various judgments referred supra, when the A.P. Civil Courts Act is not extended to the Agency Areas, the Civil Court has no jurisdiction to try the disputes pertaining to the properties situated in Agency Areas though parties are non-tribals. The judgment in **Azizuddin's case** is of the view that unless the jurisdiction of the Courts is barred either expressly or impliedly, the Civil Court is competent to try all the suits of Civil in nature, but when a specific remedy is available by way of any enactment for redressal of the grievance of the parties, the Civil Courts jurisdiction is impliedly ousted.

23. In the present case, for deciding the Civil dispute pertaining to the property situated in the Agency Areas, several Courts like Agency Munsif, Agent of the Government etc. are created under the Andhra Pradesh Agency Rules and they are competent to try and decide the Civil disputes. In fact, the plaintiff himself filed the suit O.S.No.5 of 81 seeking self same relief before Agent to the Government, but taking advantage of later judgment of the Division Bench of this Court in **Azizuddin's case**, filed the present suit.

24. Section 9 C.P.C deals with jurisdiction of the Court. According to Section 9 C.P.C., the Civil Court is competent to try all the suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Time and again, the Apex Court laid down the principles with regard to jurisdiction exercised by Civil Court when a statutory remedy is provided. A larger bench of the Apex Court consisting of seven judges in **Kamala Mills Limited Vs. State of Bombay** rules as follows:

"Exclusion of jurisdiction of civil Court expressly or impliedly, words of statutory provision on which plea of bar is rested, the scheme of relevant provision, their object and purpose to be seen. Court will consider whether remedy in special statute is sufficient or adequate. Such determination is relevant but not decisive in case of expressed bar. In case of plea of implied bar, such determination may be decisive. Special right and liability created by special statute determinable by special tribunal. Even then, Court will enquire whether remedies normally available in civil Court are prescribed by such statute."

25. In ***Dhulabai Vs. State of Madhya Pradesh*** a Larger Bench of Apex Court laid down the following seven guidelines either to assume jurisdiction of any subject matter of civil nature or to oust the jurisdiction of the Civil Court:

"(1) Whether the statute gives finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decision to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion the examination of the remedies and scheme of particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all the questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act is ultra vires cannot be brought before Tribunals constitutes under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness or the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the order of the authorities is declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined, because it is a

relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

26. In view of law declared by the Hon'ble Apex Court, when a special statutory machinery is provided under the Act, the Civil Courts jurisdiction is ousted. In the present case, the jurisdiction is conferred on the Agency Munsif, Agent of the Government and other authorities provided in the A.P. Agency Rules. On the order of Agent of the Government, an appeal would lie to the High Court. Therefore, a special statutory machinery is provided for redressal or settling the dispute under the Rules thereby the Civil Court cannot take cognizance of those disputes relating to the property situated in Agency Areas though the parties are non-tribals. In view of law declared by this Court in various judgments referred supra, I have no hesitation to accept the contention of learned counsel for the appellants. Accordingly, I find that the Civil Court has no jurisdiction to take cognizance of the suit, but the trial Court misapplied the law and held in favour of the plaintiff. In view of my foregoing discussion, point No.1 is held in favour of the defendants and against the plaintiff.

27. POINT Nos.2 and 3:

In view of Order XX Rule 5 CPC when a finding is recorded on main issue in entirety, this Court need not record any finding on other issues. Therefore, it is wholly unnecessary to record any finding on other points. Hence, no finding is recorded on other points.

28. In view of my finding on point No.1, the suit is not maintainable before the I Additional District Judge, East Godavari District, Rajahmundry as it lacks inherent jurisdiction to take cognizance of the suit. Hence, the decree and judgment, dated 25.03.1997 in O.S.No.3 of 1988 passed by the I Additional District Judge, East Godavari District, Rajahmundry are liable to be set aside.

29. Accordingly, the appeal is allowed setting aside the decree and judgment, dated 25.03.1997 in O.S.No.3 of 1988 passed by the I Additional District Judge, East Godavari District, Rajahmundry. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M.SATYANARAYANA MURTHY, J

AUGUST 31, 2015

YVL

THE HON’BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

APPEAL SUIT No.652 of 1997

Dt: 31.08.2015

YVL