

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Second Appeal No.440 of 2013
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JUDGMENT:

This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the unsuccessful defendants is directed against the decree and judgment dated 04.06.2012 of the learned Senior Civil Judge, Tadepalligudem passed in A.S.no.68 of 2004, whereby the said learned Senior Civil Judge while dismissing with costs the said first appeal suit had confirmed the decree and judgment dated 21.06.2004 of the learned Principal Junior Civil Judge, Tadepalligudem passed in O.S.no.713 of 2003 filed for specific performance in respect of an immovable property situate within the territorial jurisdiction of Tadepalligudem.

2. I have heard the submissions of the learned counsel for the appellants/defendants ('the defendants', for brevity) and the learned counsel for the first respondent/plaintiff ('the plaintiff, for brevity). I have perused the material record.

3. On 16.07.2015, this Court, while admitting the second appeal, had formulated the following substantial questions of law:

(i) **Whether the decrees and judgments of the Courts below are vitiated on account of adjudication of the issues on the evidence already recorded by the Court at Eluru and for not conducting a de novo trial after the plaint was returned by the said Court for presentation before the proper Court and on presentation of the plaint afresh in the Court of the Principal Junior civil Judge, Tadepalligudem?**

(ii) **Whether the Courts below erred in not properly appreciating the evidence and in recording incorrect conclusions that the suit schedule property is not ancestral property of the defendants, and hence, and for not considering the material evidence, the decrees and judgments of the Courts below are vitiated?**

(iii) **Whether the plaintiff is not entitled to the equitable relief of specific performance in the facts and circumstances**

of the case? And, if so, whether it is a fit case to refuse the equitable relief of specific performance even if it is otherwise lawful to grant such relief?”

Though the three substantial questions of law stated above are formulated, both the learned counsel made submissions at length only on the first substantial question of law.

4. As a prelude, it is necessary to state the introductory facts, which led to the filing of this second appeal. The sole plaintiff had brought the instant suit (old O.S.no.143 of 2000) originally on the file of the Court of the learned I Additional Junior Civil Judge, Eluru against the defendants 1 to 5 for specific performance of the contract to sell dated 24.02.1997 in respect of the property bearing D.No.2-61-A, Asst. No.822/96 admeasuring an extent of 290 ½ square yards, i.e., Ac.0.36 cents of site and tiled house at 2nd Block, Prathipadu village of Tadepalligudem of West Godavari District, more fully described in the schedule annexed to the plaint. The first defendant had died during the pendency of this suit. The 2nd defendant had remained *ex parte*. The defendants 3 to 5, who were brought on record being the legal representatives of the deceased first defendant, had filed a written statement and resisted the suit. The Court at Eluru, which conducted trial, had framed the following issues for trial:

- (i) **Whether the plaint schedule property is the ancestral property of the defendants?**
 - (ii) **Whether the first defendant has no right to sell away the schedule property?**
 - (iii) **Whether the suit sale agreement dated 24.10.1997 is a rank forgery and whether it is binding on the defendants?**
 - (iv) **Whether the plaintiff is entitled to a decree for specific performance of contract as prayed for or in the alternative whether the plaintiff is entitled to refund of the advance amount of Rs.50,000/- with interest as prayed for?**
 - (v) **Whether this Court has no jurisdiction to try the suit?**
 - (vi) **To what relief?**
- (Reproduced verbatim)**

At trial conducted by the Court of first instance, the plaintiff and his supporting witnesses were examined as PWs 1 to 3 and exhibits A1 to A5 were marked on his side. Exhibit A1 is the suit agreement to sell, exhibit A2 is the registered notice and exhibits A3 and A4 are the returned postal cover and postal acknowledgment respectively from the defendants 1 and 2. Exhibit A5 is the reply notice. The 3rd and 2nd defendants were examined as DWs 1 and 2 and no documents were marked on their side. The learned I Additional Junior Civil Judge at Eluru having conducted the trial and having answered issue no. 5 alone in regard to lack of jurisdiction of that Court had ordered for the return of the plaint, as per procedure, for presentation to proper Court. And, on that, the plaintiff presented the plaint to the Court of the learned Junior Civil Judge, Tadepalligudem, which is the proper Court, as the immovable property involved in the suit is situate within the territorial jurisdiction of the said proper Court. Without conducting *de novo* trial, the proper Court at Tadepalligudem, having taken into consideration the evidence already recorded by the Court of first instance at Eluru, had decreed the suit on merits. As already noted, the first appeal suit preferred by the defendants 2, 4, 5 and the wife of the deceased 3rd defendant was dismissed by the Court below, i.e., the Court of the learned Senior Civil Judge, at Tadepalligudem. Hence, the appellants are before this Court.

4.2 Before taking up the said first substantial question of law, it is necessary to take up first, the substantial questions of law 2 and 3, in regard to which not much stress was laid upon by the learned counsel for the defendants.

4.3 I have carefully gone through the pleadings and the oral and documentary evidence. One of the contentions of the defendants, who contested the suit, is that the suit schedule property is an ancestral property of all the defendants and that the first defendant has no right to sell the same. It is also their defence that the agreement is a rank forgery and that the plaintiff is not entitled to the equitable relief of specific performance of the suit contract

to sell. Having examined in juxtaposition, the facts and the evidence brought on record, the Courts below at Tadepalligudem had recorded concurrent findings of fact that the suit schedule property is not the ancestral property of all the defendants and that the suit agreement is true and that the plaintiff, who is always ready and willing to perform his part of the contract, is entitled to the equitable relief of specific performance. Accordingly, the Courts below had granted a decree for specific performance in favour of the plaintiff. After critically examining the material facts and the evidence brought on record, this Court is satisfied that there is neither perversity nor mis-appreciation of the facts and also the evidence by the Courts below and that on the other hand, the Courts below had appreciated the facts correctly and the evidence in proper perspective before recording findings supported by reasons and that the said concurrent findings of fact supported by valid and cogent reasons do not brook interference. Therefore, the substantial questions 2 and 3 which are not pure questions of law and which are a blend of fact and law deserve no countenance, in the well considered view of this Court. Further, the findings of the Courts below, in the facts and circumstances of the case, are possible and plausible. Therefore, even if another view may be possible, this Court shall not substitute such a view as it is impermissible, more particularly when the Court of first appeal, which is the last Court of fact, concurred with the findings of the trial Court. Accordingly, the said two questions are answered against the defendants.

5. Now, the first substantial question, which is as follows, is taken up.

(i) Whether the decrees and judgments of the Courts below are vitiated on account of adjudication of the issues on the evidence already recorded by the Court at Eluru and for not conducting a *de novo* trial after the plaint was returned by the said Court for presentation before the proper Court and on presentation of the plaint afresh in the Court of the Principal Junior civil Judge, Tadepalligudem?

5.1 I shall now sum up the crux of the factual matrix before adverting to the contentions, the provisions of law and the precedents relied upon by both the sides.

The suit for specific performance in respect of a property situate within the territorial jurisdiction of the Civil Court (Junior Division) at Tadepalligudem was wrongly instituted in the Court of the learned Additional Junior Civil Judge, Eluru ('the Court of first instance', for brevity). Therefore, the Court of first instance in which the suit was originally instituted lacked territorial jurisdiction to entertain and try the suit, is undisputed. On the defence raised in regard to lack of jurisdiction, an issue was also framed by the Court of first instance as follows: 'Whether this Court has no jurisdiction to try the suit?' Nonetheless, the learned Judge of the Court of first instance had conducted trial and recorded evidence of both the sides. Thereafter, the learned Judge of the Court of first instance, by his judgment dated 27.10.2003, while answering the said issue no.5 alone, had recorded a finding that the Court of first instance at Eluru lacked territorial jurisdiction to entertain and try the suit, and had therefore, ordered for return of the plaint under Order VII Rule 10 of the Code, and had also directed issuance of a notice under Order VII Rule 10(A) to the plaintiff. Then, the plaintiff had filed an interlocutory application praying the Court of first instance to fix a date for appearance of the parties before the proper Court, i.e., the Court of the learned Principal Junior Civil Judge, Tadepalligudem ('the proper Court', for brevity). The Court of first instance while ordering the said interlocutory application had directed both the parties to appear before the proper Court on 12.12.2003. Later, the plaint alone that was returned by the Court of first instance was then presented before the proper Court, that is, the Court of the learned Principal Junior Civil Judge, Tadepalligudem. In the said circumstances, the old suit O.S.no.143 of 2000 originally on the file of the Court of the first instance was re-numbered as O.S.no.173 of 2003 on the file of the proper Court. Since the receipt of the record from the Court of first instance was awaited, the proper Court had adjourned the matter from time to time. After the record was received, the proper Court had adjourned the suit for hearing arguments, as the trial was already conducted by the Court of first instance and the oral evidence was already recorded and the documents were also marked during the trial conducted by the Court of first instance.

Accordingly, without conducting *de novo* trial and only after hearing the arguments, the proper Court had decreed the suit of the plaintiff by taking into consideration the oral evidence recorded and the documents marked by the Court of first instance, which admittedly lacked territorial jurisdiction to entertain and try the suit. The decree and judgment of the trial Court, i.e., the proper Court were confirmed by the Court below.

Therefore, for answering the substantial question, the short but important questions that fall for consideration, incidentally are – (i) ‘Whether the proper Court was correct in acting upon and considering the evidence already recorded by the Court of first instance? And, (ii) ‘Whether the decrees and judgments of the Courts below at Tadepalligudem are liable to be set aside for the proper Court not treating the suit as a suit instituted afresh and for not conducting all further proceedings *de novo* and for not conducting *de novo* trial, after the presentation to it, the plaint that was returned by the Court of first instance?

5.2 It is apt to restate for emphasis that the trial was conducted and evidence was recorded by the Court of first instance at Eluru, which Court admittedly lacked territorial jurisdiction to entertain and try the suit. Further, on the return of the plaint by the said Court for presentation to proper Court, and on such presentation of the plaint to the proper Court, the proper Court had assigned a new suit number, but had disposed of the said suit without conducting *de novo* trial and by only taking into consideration the evidence already recorded by the Court of first instance, though the law is well settled that on presentation of the plaint in proper Court, it shall be treated as a fresh institution and not a continuation of the suit filed in the original Court.

5.3 Now that the core facts are already stated *supra*, it is necessary to look at the provisions of law and the ratios in the precedents cited and sum up the legal position.

Order VII Rule 10, Rule 10-A and Section 24 of the Code, read as under:

Rule10. Return of plaint: - (1) Subject to the provisions of Rule 10-A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation:- For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule.

(2) Procedure on returning plaint: - On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it and a brief statement of reasons for returning it.

Rule 10-A

“Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of the plaint was made by it on the ground that it has no jurisdiction to try the suit, - (a) fix a date for appearance of the parties in the Court in which the plaint is proposed to be presented; and (b) give to the plaintiff and to the defendant notice of such date for appearance.”
“Where the notice of the date for appearance is given under sub-rule (3)-- (a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded otherwise directs; and (b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

Section 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 desire 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 pending 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 retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this Section,---

(a) Court 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."

6. I have gone through carefully all the precedents cited by the learned counsel for both the sides.

6.1 The following decisions viz., (i) **Amar Chand Inani v. Union of India**^[1]; (ii) **Mohd. Mustafa Shareef v. Masoom Ali Mohalla Committee, Warangal and others**^[2]; (iii) **Mohd. Afzaluddin Ahmed and another v. Trustees Board Mahdavia Club, Hyderabad and others**^[3]; (iv) **T.H. Yashwanta and others v. T.J. Jagadeesh and others**^[4]; (v) **Mohini Mohan Das and others v. Kunjabehari Das**^[5] and **Govindaswami Kadavaram v. Kaliapermal Munayathriyam**^[6] are undisputedly the authorities for the proposition that when a plaint is returned by the Court of first instance for presentation to the proper Court and was presented in that Court, the suit can be deemed to be instituted in the proper Court when the plaint was presented in that Court. In other words, the suit instituted in the proper Court by the presentation of the returned plaint, was not a continuation of the suit filed in the original Court. Thus, the suit after its re-numbering on presentation of the plaint in the proper Court shall be treated as a suit instituted afresh for all

purposes.

6.2 Further, when the Court upholds an objection raised as to jurisdiction of the Court to entertain the suit, the plaint alone should be returned, vide the ratios in the decisions in **Mohd. Mustafa Shareef** (2nd supra) and **V.R.A.R.M. Chettyar Firm and others v. C.R.A.C.T. Nachiappa Chettyar**^[7].

6.3 From the provisions of law under Order VII Rule 10, it also emerges that on the institution of the suit in the proper Court by presentation of the plaint that was returned by the Court of first instance, even it is necessary to serve the defendant with the summons for appearance in the suit instituted in the proper Court unless the procedure contemplated under sub-rules (3) and (4) of Rule 10 of Order VII of the Code is followed. Therefore, on the return of the plaint alone by the Court of first instance for presentation to the proper Court and on the then presentation of the returned plaint to the proper Court, that suit instituted in the proper Court on such presentation of the plaint in that proper Court would be a freshly instituted suit, is an undisputed and settled proposition of law.

6.4 While dealing further with the legal position obtaining, it is also to be noted that there is a clear distinction between 'return of the plaint by the Court of first instance for presentation to proper Court under Order VII Rule 10 of the Code' on the one hand and 'the transfer of the suit from the former Court to the transferee Court under Section 24 of the Code', on the other. When plaint is returned under Order VII Rule 10 of the Code for presentation to proper Court, the plaint alone is returned; and the plaint then so re-presented in the proper Court shall not be treated as a continuation of the plaint presented in the Court of first instance and therefore, the suit that stands instituted in the proper Court on the presentation of the returned plaint shall be treated as a suit instituted afresh for all purposes including for the purpose of limitation or for Court fee and in all other respects. On the contrary, in the case of transfer of suits, the entire suit upto the stage to which it was tried by the former Court is transferred to the transferee Court and it is left to the discretion of the

transferee Court, as provided under Section 24(2) of the Code either to retry the suit or proceed from the point at which it was transferred or withdrawn. However, such discretion of the transferee Court is subject to any special directions that may be given in that case in the order of transfer. These views of this Court get reinforced from the following decisions: **Mohd. Mustafa Shareef** (2nd supra); **Vogel Media International GmbH and another v. Jasu Shah and others** ^[8]; and, **Bishnu Prasad Upadhyaya v. Amar Singh** ^[9]. In these decisions, the distinction between the power of the Court to return the plaint and the power of the Court to transfer a suit was emphasized. In the decision in **Bishnu Prasad Upadhyaya** (9 supra), it was held that the power to transfer and the power to return the plaint, because it is not triable by the Court to which it has been presented, are two different things and that the power to transfer is possessed by the District Court and the High Court and whereas, the power to return the plaint is possessed by all the civil Courts and that when exercising that power, what the civil courts decide is that the suit is not triable by the particular Court and that the civil courts are then concerned in only returning the plaint and it is not their duty to decide to which Court it will go and it is the business of the plaintiff to whom the plaint has been returned to find out which is the proper Court and to present it to that proper Court.

6.5 From the ratios in the decisions in **Mohd. Mustafa Shareef** (2nd supra) and **Mohd. Afzaluddin Ahmed** (3rd supra) of this Court and the ratios in the decisions of the Supreme Court in **Amar Chand Inani** (1 supra), **Joginder Tuli v. S.L.Bhatia and another** ^[10] and **Oil and Natural Gas Corporation Limited v. Modern Construction and Company** ^[11], it is manifest that the proper court to which the plaint is later on presented will have to commence the proceedings on such plaint afresh and that the suit instituted in proper court on re-presentation of the plaint in that Court would be a freshly instituted suit and consequently, such suit will have to be tried *de novo* and even the interim orders like interim injunctions granted by the court of first instance, which lacked the jurisdiction would not even continue. As per the ratio in **Oil**

and Natural Gas Corporation Ltd. (11 supra), the date of reckoning insofar as the institution of the suit is the date on which the returned plaint is presented in the proper court.

6.6 The facts of the case in the decision in **Joginder Tuli v. S.L.Bhatia** (10 supra) disclose that a plaint was returned for presentation before the proper court and that in the original order passed by the High Court, the District Judge was directed to proceed with from the stage at which the suit stood transferred to the District Court and that in the appeal by Special Leave from the order of the learned Single Judge of the High Court of Delhi, the Supreme Court had held that the said direction of the High Court appears to be correct in the circumstances of the case. The Supreme Court had further held as follows:

“Normally, when the plaint is directed to be returned for presentation to the proper court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that stage at which the suit stood transferred. We find no illegality in the order passed by the High Court warranting interference.”

From the ratios in the decisions, the legal position that emerges is this: ‘When plaint is ordered to be returned under Order VII Rule 10 of the Code for presentation to proper Court, the plaint alone is returned; and the plaint then so presented in the proper Court shall not be treated as a continuation of the plaint presented in the Court of first instance and therefore, the suit that stands instituted in the proper Court on the presentation of the returned plaint shall be treated as a suit instituted afresh for all purposes including for the purpose of limitation or for Court fee and in all other respects. The proper Court to which the plaint is later on presented will have to commence the proceedings afresh on such presentation of the plaint. Since the plaint so presented is not a continuation of the plaint presented in the Court of first instance, the proper Court shall take all proceedings thereafter *de novo*.’ This legal position is settled and is beyond the pale of any controversy.

Now that the legal position is stated, it is necessary to refer the submissions of the learned counsel for both the sides.

7. In this stated backdrop, the defendants/appellants now contend as follows:

The admitted facts make it manifest that the suit was originally instituted in a wrong Court. In pursuance of an order under Order VII Rule 10 of the Code passed by that court, the suit was instituted by presentation of the plaint in the proper Court, which had territorial jurisdiction to entertain the suit. The suit can be deemed to have been instituted in the proper Court when the plaint was presented in that Court. The suit that was instituted in the proper Court by the presentation of the returned plaint was not a continuation of the suit filed in the Eluru Court (Court of first instance). Therefore, the presentation of the plaint in the proper Court at Tadepalligudem can only be deemed to be a proper presentation and hence, the presentation of the plaint in the wrong Court at Eluru (Court of first instance) cannot be deemed to be presentation of it on that day in the proper Court. When a plaint is returned for presentation to proper Court, the proper Court to which the plaint is then presented is required to try the suit afresh/*de novo* by following the procedure prescribed under the Code as this factual and legal aspect is clear from Rule 10(a) of the Code, which provides that notwithstanding that the order of return of the plaint is made on the ground that the Court had no jurisdiction to try the suit, while returning the plaint, the court would fix the date of appearance of the parties before the proper court and give notice of appearance to the plaintiff and defendants and thereby, after presentation of the plaint to the proper court, it would not be necessary to serve the defendant with the summons once again and that except the aforesaid purpose, the suit, for all purposes is treated as a freshly instituted suit before the proper court. The trial that had taken place and the evidence that was recorded by the court of first instance and the other steps taken, therefore, cannot be saved and cannot be relied upon by the proper Court to which the returned plaint is later presented. The effect, therefore, is that the evidence recorded and the documents marked in the court of the first instance cannot be relied upon for the purpose of disposal of the suit by the proper Court. The law is well settled that even the interim orders like the interim

order of injunction passed by the Court of first instance do not continue to operate after presentation of the plaint to the proper Court, after its return, as the suit has to be tried *de novo* by the proper Court. Therefore, after the return of the plaint alone by the Court of first instance at Eluru and on the then presentation of the plaint alone to the proper Court at Tadepalligudem, that Court ought to have treated that the plaint so presented is not a continuation of the plaint presented in the court of first instance and ought to have treated the plaint so presented in the proper Court as a plaint presented afresh for all purposes, viz., limitation, court fee and all other respects and ought to have taken up all the proceedings including trial *de novo*. The proper Court, which had disposed of the suit on merits, ought to have noted the clear distinction between the transfer of suit under Section 24 of the Code from one Court to the other on one hand, and the return of the plaint by the Court of first instance under Order VII Rule 10 of the Code for presentation to proper Court on the other. In the case on hand, the proper court to which the plaint was then presented after return by the court of first instance, erroneously treated that the presentation of the plaint in the proper Court is a continuation of the suit and had failed to treat the plaint as freshly instituted and had further failed to conduct *de novo* trial and had further erroneously relied upon the oral and documentary evidence that was already recorded by the court of first instance, i.e., the wrong Court, though such evidence was not saved under law. The proper Court had ultimately, erroneously decreed the suit of the plaintiff. In view of the settled legal position, the very procedure adopted by the trial Court/proper Court in disposing of the suit being not in accordance with law, the decree and judgment passed by the proper Court, as confirmed by the Court of first appeal, are liable to be set aside.

7.1 What is to be next noted is that the learned counsel for the plaintiff while not disputing the general legal proposition that the proper Court in which the suit comes to be instituted on the presentation of the returned plaint has to take up all the proceedings thereafter *de novo* would, however, submit that the decrees and judgments of the two Courts below are sustainable by raising certain contentions and distinguishing the case on hand with

reference to the facts.

The said contentions are now taken up in seriatim.

7.2 The first set of submissions of the learned counsel for the plaintiff which require consideration are as follows: 'In the case on hand, the court of first instance lacked only territorial jurisdiction and not inherent jurisdiction. Both the courts, i.e., the court of first instance at Eluru, which lacked territorial jurisdiction, and the proper court, i.e., the court at Tadepalligudem are within the District of West Godavari. Both the courts are civil courts of Junior Division having equal status insofar as the jurisdictions they exercise. The said courts have the same limits of pecuniary jurisdiction. They also exercise similar inherent jurisdictions, which are innate in such courts of same cadre. Nevertheless, in the case on hand, the court of first instance had no territorial jurisdiction to entertain the suit only for the reason that the immovable property involved in the suit for specific performance is situated outside the territorial jurisdiction of that court and is situate within the territorial jurisdiction of the proper court, which ultimately disposed of the suit on merits after hearing the arguments of both the sides. Therefore, the court of first instance is not a court, which lacked inherent jurisdiction. The trial that was conducted and the evidence recorded by the court of first instance are saved and are valid and can be acted upon by the proper court, since the court of first instance though was not having territorial jurisdiction is otherwise having similar inherent jurisdiction. The evidence recorded by the court of first instance may not be saved and cannot be acted upon, if only, that Court lacked inherent jurisdiction and as well as territorial jurisdiction. Decree passed without inherent jurisdiction is a nullity. A defect in regard to territorial jurisdiction is not equatable to lack of inherent jurisdiction as neither consent nor waiver can cure the defect of inherent lack of jurisdiction, but insofar as the territorial jurisdiction is concerned, it can be waived by the parties. Since the court of first instance, which had recorded the evidence and marked the documents is having inherent jurisdiction though not territorial jurisdiction, the evidence recorded by the said court is saved and is valid and therefore, the courts below cannot be faulted for taking into consideration the said evidence

and in acting upon it without conducting *de novo* trial. Both the said Courts have the same limits insofar as pecuniary jurisdiction and also same confines of inherent jurisdictions. It can only be said that the evidence recorded by the Court of first instance may not be saved and cannot be acted upon, if only, that original Court lacked inherent jurisdiction. Lack of territorial jurisdiction of the Court of first instance cannot be equated to lack of inherent jurisdiction.’ *Per contra*, the learned counsel for the defendants would contend that the issue whether the Court of first instance lacked jurisdiction to try and entertain the suit is the only relevant consideration and the question in regard to inherent jurisdiction of the Courts is not relevant and that the only relevant point of poignant importance is that once the plaint is presented in proper Court after its return by the Court having no territorial jurisdiction, it is to be treated as a fresh presentation of plaint for all purposes and that even if the trial was conducted earlier by the Court of first instance it had to be done *de novo* by the proper Court as the evidence recorded by the Court of first instance is not saved. He would, therefore, submit that the relevant aspect is the competency of the Court of first instance and the vital aspect is the plaint presented in the proper court is a fresh presentation of plaint for all purposes and the fresh presentation of the plaint in the proper Court shall not be deemed as a continuation of the suit originally instituted.

7.3 Keeping in view the legal position, which was summed up *supra*, and the contentions, it is necessary to refer to the relevant facts and the ratio in the decision of the Supreme Court in **ONGC Ltd.**, (11 *supra*), which are as follows: ‘The respondent instituted the suit in the civil Court at Mehsana, which admittedly had no territorial jurisdiction to entertain the suit. In spite of the fact that the civil suit stood decreed, the High Court while allowing the three appeals on the limited ground that Civil Court at Mehsana had no jurisdiction to entertain the suit had directed the plaints to be returned to the plaintiff for filing suits in appropriate Forum or Court at appropriate place in view of the provisions of Order VII Rule 10 of the Code. Thus, the plaints are ordered to be returned to the plaintiff for presentation to proper Court having territorial jurisdiction.’ In this background of facts of the cited case, it was

contended that once the plaint is presented after being returned from the Court having no jurisdiction, it is to be treated as a fresh suit and even if the trial was conducted earlier, as in the instant case, it had to be done *de novo*. It was also urged that the only protection could be to take advantage of the provisions of Section 14 of the Limitation Act, 1963 and the Court Fees paid earlier may be adjusted, but by no stretch of imagination, it can be held to be a continuation of the suit. The Supreme Court in this cited decision has referred to its earlier decisions and the ratios therein. It is trite to extract the same *infra, verbatim*.

“In Sri. Amar Chand Inani v. Union of India [AIR 1973 SC 313], the issue involved herein was considered and this Court held that in such a fact-situation, where the plaint is returned under Order VII Rule 10 Code of Civil Procedure and presented before the court of competent jurisdiction, the Plaintiff is entitled to exclude the time during which he prosecuted the suit before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act and by no means it can be held to be continuation of the earlier suit after such presentation.

In Hanamanthappa and Anr. v. Chandrashekhappa and Ors. [AIR 1997 SC 1307], this Court reiterated a similar view rejecting the contention that once the plaint is returned by the court having no jurisdiction and is presented before a court of competent jurisdiction, it must be treated to be continuation of the earlier suit. The Court held:

“In substance, it is a suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of the Court fee.....At best it can be treated to be a fresh plaint and the matter can be proceeded with according to law.”

In Joginder Tuli v. S.L. Bhatia and Anr. [(1997) 1 SCC 502], this Court dealt with a case wherein the landlord had terminated the tenancy and filed a suit for possession. An application for amendment of the plaint to recover damages for the use and occupation was also filed. On that basis, the pecuniary jurisdiction of the Trial Court was beyond its jurisdiction and accordingly the plaint was returned for presentation to proper court. On revision, the High Court directed the Court to return the plaint to the District Court with a direction that the matter would be taken up by the District Court and proceeded with from the stage on which it was returned. This Court disposed of the case observing:

‘Normally, when the plaint is directed to be returned for presentation to the proper court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that stage at which the suit stood transferred. We find no illegality in the order passed by the High Court warranting interference.’

This Court in Harshad Chimanlal Modi (II) v. D.L.F. Universal Ltd. and Anr. [AIR 2006 SC 646] has approved and followed the judgment of this Court in Sri. Amar Chand Inani (supra) and distinguished the case in Joginder Tuli (supra) observing that:

‘The suit when filed was within the jurisdiction of the Court and it was properly entertained. In view of amendment in the plaint during the pendency of the suit, however, the plaint was returned for presentation to proper court taking into account the pecuniary jurisdiction of the court. Such is not the situation here.’

Section 14 of the Limitation Act provides protection against the bar of limitation to a person bonafidely presenting his case on merit but fails as the court lacks inherent jurisdiction to try the suit. The protection also applies where the Plaintiff brings his suit in the right court, but is nevertheless prevented from getting a trial on merits because of subsequent developments on which a court may lose jurisdiction because of the amendment of the plaint or an amendment in law or in a case where the defect may be analogous to the defect of jurisdiction.

Having regard to the facts of the case and the contentions and also the above ratios in the above decisions, the Supreme Court had summarized the legal position as follows:

Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order VII Rule 10 Code of Civil Procedure and the Plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the Plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted *de novo* even if it stood concluded before the court having no competence to try the same.

We are of the considered view that once the plaint was presented before the Civil Court at Surat, it was a fresh suit and cannot be considered to be continuation of the suit instituted at Mehsana. The Plaintiff/Respondent cannot be permitted to take advantage of its own mistake instituting the suit before a wrong court. The judgment and order impugned cannot be sustained in the eyes of law.

Further, in the decision in **Harshad Chamanlal Modi (II) v. DLF Universal**

Ltd. ^[12], the facts are as follows: A suit was instituted in the year 1988 on the original side of the High Court of Delhi for declaration, specific performance of an agreement, possession of the property and perpetual injunction. The suit was resisted by filing a written statement. No objection as to jurisdiction of the Court was raised. The jurisdiction of the Court was admitted. The suit was transferred to District Court, Delhi in 1993. The defendants sought amendment of written statement by raising an objection as to jurisdiction of the Court at Delhi as the immovable property was situated in Gurgaon District. The said application was allowed and an additional issue was framed on the aspect of jurisdiction of the Delhi Court to entertain and try the suit. After hearing the parties, the trial Court held that the Delhi Court had no jurisdiction and accordingly, the plaint was ordered to be returned to the plaintiff for

presentation to the proper Court. The plaintiff approached the Delhi High Court. The High Court allowed the Teeshazari Court, Delhi to proceed with the suit and directed not to deliver the judgment until further orders. Pleadings were completed and evidence was let in and when the suit was ready for final arguments and disposal, the suit was adjourned *sine die*. The Delhi High Court had confirmed the order of the trial Court ordering return of the plaint. The Supreme Court also confirmed the order passed by the trial Court as well as by the High Court. Therefore, the suit was required to be tried by the Gurgaon Court. Since seventeen years have passed from the date of institution of the suit and the pleadings were completed and the evidence was recorded and even the arguments were over, an application was filed before the Supreme Court to direct the Gurgaon Court to take up the suit from the stage at which it stands transferred and to decide it expeditiously.” Be it noted that while disposing of the appeal earlier filed, the Supreme Court had already held that the suit could not have been instituted in the Delhi Court and had not granted the prayer made at that time of hearing of the appeal, which was also made in the interlocutory application. The Supreme Court while disposing of the subsequently filed interlocutory application, having considered the facts, the provisions of the Limitation Act, Order XVIII Rule 15, Order VII Rule 10 and Sections 24 and 25 of the Code and the ratio in the decision in Amar Chand Inani (1 supra) had held that the application deserves to be dismissed and had accordingly dismissed the application while emphasizing the following proposition of law, which was stated in SCC Page 118 paragraph 9: **“....when the plaint was returned for presentation to the proper Court and was presented in that Court, the suit can be deemed to be instituted in the proper Court only when the plaint was presented in that Court.”** In other words, it was held that the suit instituted in the trial Court by the presentation of the plaint returned by the Panipat Court was not a continuation of the suit filed in the Karnal Court. In the decision of the Madras High Court (6 supra) of the year 1921, it was also held that the plaint at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted and that all proceedings, which took place in the suit before such return are of no effect. Since a long

time, the legal position is settled to the effect that all proceedings which took place in the suit before the return of the plaint are of no effect. Further, in **Nimai Kar v. Bishnupada Saha & Another**^[13], the Agartala Bench of the Gauhati High Court having referred to the decisions of the Supreme Court had held that it can be said that after return of the plaint by the Court of first instance so far as the suit in that court is concerned, is ended and/or finally disposed of and that the suit would be deemed to have been instituted afresh when the plaint is presented before an appropriate Court. Though the learned senior counsel for the plaintiff strenuously contended that the Court of first instance lacked only territorial jurisdiction but not inherent jurisdiction and that therefore, the trial conducted and the evidence recorded by it are saved and that the said evidence can be acted upon by the proper Court, the said contention cannot be countenanced in view of the settled legal position laid down by the Supreme Court consistently in various precedents and as the vital aspect is the competence of the Court of first instance. Further, the vital aspect which is of poignant importance is as follows:

After presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted *de novo* even if it stood concluded before the court having no competence to try the same. In other words, the proper Court to which the plaint is later presented will have to commence the proceedings on such plaint afresh and the suit instituted in proper court would be a freshly instituted suit and consequently such suit will have to be tried *de novo* and even the interim orders like interim injunction granted by the court of first instance which lacked jurisdiction would not even continue and all proceedings, which took place in the suit before such return of the plaint are of no effect.

8. In view of the above precedential guidance, this Court holds that the contention that the Court of first instance lacked only territorial jurisdiction but not inherent jurisdiction and therefore, the evidence recorded by it is saved and that the said evidence can be acted upon by the proper Court is a contention contrary to the settled legal position and hence, the same cannot be countenanced by this Court as this Court is bound by the ratios in the decisions of the Supreme Court. Viewed thus, this Court finds that the judgments and decrees of the trial Court/the proper Court and that of the first appellate Court are liable to be set aside for the following reasons: 'That the proper Court had not treated the returned plaint presented to it as a fresh

presentation; and had treated it as a continuation of the suit originally instituted; and had failed to conduct a *de novo* trial; and had erroneously acted upon the evidence already recorded by the Court of first instance, though that evidence recorded was not saved in view of the fact that the suit instituted in the trial Court (proper Court) by the presentation of the plaint returned by the Eluru Court was not a continuation of the suit filed in the Tadepalligudem Court.

8.2 The second set of submissions are as under:

‘When the proper court had directly posted the suit for hearing the arguments of both the sides without giving a date for *de novo* trial, the defendants did not raise any objection and therefore, the proper Court having heard the arguments of the learned counsel had disposed of the suit on merits. After the first appeal suit was dismissed, the defendants having thus waived their right to raise this contention and having found that they have no case on merits of the matter, had raised this question for the first time in this second appeal. Therefore, on the ground of waiver, the defendants are not entitled to raise this issue for the first time in this second appeal. Further, the defendants could not show and establish that any prejudice has been caused to them on account of the proper Court not conducting *de novo* trial and that Court acting upon the oral and documentary evidence taken on record by the original Court.’ On the other hand, the learned counsel for the defendants would contend that the question of waiver does not arise and that the defendants need not show that any prejudice has been caused as the failure to conduct *de novo* trial by the proper Court goes to the root of the matter and vitiates the decrees and judgments in view of the settled legal position. He would also contend that when the plaintiff had committed a grave mistake in presenting the plaint to the wrong Court at the inception, he cannot be allowed to take advantage of his own mistake and be permitted to raise the plea of waiver and lack of prejudice.

9. The decision rendered by a three-Judge Bench of the Supreme Court in **Mademsetty Satyanarayana v. G.Yelloji Rao and others**^[14] was relied

upon by the learned senior counsel for the plaintiff in support of the contention that when a right is available and was abandoned, the defendants cannot be allowed to change their position and again contend that the trial Court (proper Court) ought to have conducted *de novo* trial as they have not raised this contention when the proper Court posted the suit for hearing arguments. In the case on hand, the defendants raised a plea that the court of first instance is not having territorial jurisdiction and a specific issue was also framed and was answered in favour of the defendants by the Court of first instance and therefore, the plaint was directed to be returned to the plaintiff for presentation to proper Court and accordingly, the plaint that was returned was presented to the proper Court. Therefore, the plaintiff cannot be heard to say that the defendants had not raised the issue of jurisdiction and had waived their right to question the jurisdiction of the Court. Be that as it may. On these aspects, it is necessary to refer to the relevant ratio in the decision in **ONGC Ltd., v. M/s. Modern Construction** (11 supra). In this cited case, a contention was also raised that the respondent therein cannot be permitted to take advantage of a mistake of the Court and raise a technical objection to defeat the cause of substantial justice and that the maxim *Actus Curiae neminem gravabit* comes into play. While answering the said contention, the Supreme Court had referred to the following ratio in the decision in **Bhartiya Seva Samaj Trust v. Yogeshbhai Ambulal Patel** [(2012)9 SCC 310].

A person alleging his own infamy cannot be heard at any forum, what to talk of a writ court, as explained by the legal maxim *allegans suam turpitudinem non est audiendus*. If a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong.... This concept is also explained by the legal maxims *commodum ex injuria sua non habere debet* and *nullus commodum capere potest de injuria sua propria*.”

Having referred to the said legal position, the Supreme Court had further held that the respondent therein cannot take the benefit of its own mistake as the respondent instituted the suit in civil Court at Mehsana, which admittedly had no jurisdiction to entertain the suit, and that the wrong doer cannot get benefit of its own wrong and that the wrong doer cannot be permitted to take advantage of its own mistake. Viewed thus, this Court finds that there is no

substance in the contentions raised based on waiver and prejudice.

10. Having regard to the reasons and findings *supra*, this Court holds that the proper Court, that is, the trial Court committed a grave error in acting contrary to the settled legal position and in decreeing the suit of the plaintiff by acting upon the evidence recorded by the court of first instance, which was not saved, and in not conducting *de novo* trial on presentation of the returned plaint to it by duly treating such presentation as presentation afresh for all purposes. No doubt, as rightly pointed out, the controversy is very old and relates to specific performance of a contract to sell. For that reason, this Court cannot approve the wrong committed by the courts below and accept the contention of the plaintiff to confirm the decrees and judgments of the courts below, which are unsustainable in the light of the legal position that is obtaining.

11. Before parting with the case, it is necessary to mention that in the light of the legal position obtaining and applicable to the facts of the case, and as the decisions of the Supreme Court are referred to in *extenso*, it is not necessary to refer to any other precedents, which explain the same settled legal position in regard to the jurisdiction of civil courts. Be it noted that the parties are bound by the ratios in the decisions rendered by the Supreme Court and hence, a view contrary to the precedential guidance of the Supreme Court is impermissible in the present factual context.

12. In the result, the Second Appeal is allowed and the decree and judgment of the Court below confirming the decree and judgment dated 21.06.2004 of the learned Principal Junior Civil Judge, Tadepalligudem passed in O.S.no.713 of 2003 are hereby set aside and the suit is remitted to the trial court for conducting *de novo* trial and disposal of the suit afresh on merits and in accordance with the procedure established by law. Since the suit is a very old suit of the year 2003, it is needless to state that the trial court/proper court shall make an endeavor to dispose of the suit as expeditiously as possible, preferably, within three months from the date of receipt of a copy of this judgment.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this second appeal shall stand closed.

M. SEETHARAMA MURTI, J

29th February, 2016
RAR/VJL

[\[1\]](#) AIR 1973 SC 313

[\[2\]](#) 2011 (4) ALD 614

[\[3\]](#) 2014(2) ALD 307

[\[4\]](#) 1999 A I H C 2644

[\[5\]](#) AIR (30) 1943 Calcutta 450

[\[6\]](#) AIR 1921 Madras 696

[\[7\]](#) AIR 1935 Rangoon 310

- [\[8\]](#) 2005 A I H C 1119
- [\[9\]](#) AIR 1959 MANIPUR 9
- [\[10\]](#) (1997) 1 SCC 502
- [\[11\]](#) (2014) 1 SCC 648
- [\[12\]](#) (2006) 1 Supreme Court Cases 364
- [\[13\]](#) AIR 2011 GAUHATI 1
- [\[14\]](#) AIR 1965 SUPREME COURT 1405 (1)