

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

C.R.P.No.3700 of 2006

Between:

Malisetti Subba Rao.

....Petitioner

And

Kanneti Sva Parvathi Devi.

.....Respondent

JUDGMENT PRONOUNCED ON : 05.09.2017

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON' BLE SRI JUSTICE N. BALAYOGI

1. Whether Reporters of Local newspapers may be allowed to see the Judgment ? : Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals ? : Yes/No
3. Whether Their Ladyship/ Lordship wish to see the fair copy of the judgment ? : Yes/No

SURESH KUMAR KAIT, J

N. BALAYOGI, J

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON' BLE SRI JUSTICE N. BALAYOGI

C.R.P.No.3700 of 2006

DATE: 05.09.2017

Between :

Malisetti Subba Rao.

....Petitioner

And

Kanneti Sva Parvathi Devi.

.....Respondent

For Petitioner : Sri N. Sreerama Murthy, Advocate.

For Respondent : None appeared.

< Gist:

> Head Note:

? CITATIONS:

1. AIR 2011 SC 421
2. 1966 An.W.R. 282
3. 1969 An.W.R. 222
4. 2004(5) ALD 57

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HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE N. BALAYOGI

C.R.P.No. 3700 of 2006

ORDER:- (Per Hon' ble Sri Justice Suresh Kumar Kait)

This Civil Revision Petition is filed to challenge the decree and order dated 19.04.2006 made in C.M.A.No. 12 of 2005 by the Additional Senior Civil Judge, Tenali by confirming the order dated 12.04.2005 made in C.R.F.No. 12208 of 2004 on the file of I Additional Junior Civil Judge, Tenali for returning the plaint for presentation in proper Court.

2. We have heard the learned counsel for the petitioner.
3. The learned counsel for the petitioner submits that when this Court laid the proposition of law in 1996 An.W.R. 282 and 1969 An.W.R. 222 to the effect that "Assignment would constitute a part of the cause of action and the Court within whose jurisdiction the assignment took place would have jurisdiction to entertain the suit", the appellate Court should have held that the trial Court has got territorial jurisdiction to try the suit.
4. The learned counsel for the petitioner further submits that both the Courts below gravely erred in relying on decisions cited 2004(2) L.S. 510 = 2004(5) ALD 57 and in negating the contention of the petitioner-plaintiff to the

effect that the trial Court at Tenali has got territorial jurisdiction to entertain the suit pursuant to the assignment deed. Accordingly, the Courts below should have held that the aforesaid decision is not applicable to the facts of the case and the trial Court at Tenali has territorial jurisdiction to try the suit.

5. It is pertinent to mention here that in the instant petition the respondent has refused to receive the notice sent to him, as such, it is deemed that notice is served on him under law.

6. It is further pertinent to mention here that when the present Civil Revision Petition was listed on 08.02.2012 before the learned Single Judge, the said Court passed the following order:-

“A perusal of the order of the lower appellate Court would show that divergent views were expressed by this Court on the aspect of jurisdiction in such cases. While the learned single Judges in the Judgments in Chittaruvu Radhakrishnamurthy (1966 An.W.R. 282) and P.S.Kothandarama Gupta v. Sdamsetty Vasant Kumar (1969 An.W.R. 222) have taken the view that the transferee can institute the suit in the Court within whose jurisdiction the endorsement of transfer was made, another learned single Judge in S.S.V.Prasad v. Y. Suresh Kumar [2004(2) L.S. 510] has taken a contra view. In my opinion, in view of these conflicting views and to have an authoritative pronouncement on this aspect, it is appropriate that the issue is decided by a Division Bench. The case is accordingly referred to the Division Bench.

The Registry shall place the papers before the Honourable Chief Justice for appropriate orders in this regard” .

Accordingly, this matter is placed before this Court.

7. In case of *Safiya Bee v. Mohd. Vajahath Hussain*¹ the Supreme Court has held as under:

“The learned Judges were not right in overruling the statement of the law by a Co-ordinate Bench of equal strength. It is an accepted rule or principle that the statement of the law by a Bench is considered binding on a Bench of the same or lesser number of Judges. In case of doubt or disagreement about the decision of the earlier Bench, the well accepted and desirable practice is that the later Bench would refer the case to a larger Bench.”

8. The brief facts of the case are that the petitioner-plaintiff filed the plaint and the same was returned for want of jurisdiction by the Junior Civil Judge's Court, Tenali. Being aggrieved, he filed C.M.A.No. 12 of 2005 and the same was dismissed vide order dated 19.04.2006.

9. The trial Court returned the plaint on the ground that the respondent is the resident of Amudalapalli, R/o.Komaravolu village, Nizampatnam Mandal and the promissory note was executed in favour of one Malisetty Raghava Rao of Nizampatnam Mandal. Even though the wife of the original promisee assigned the promissory note herein in favour of the plaintiff at Tenali to collect and enjoy the

¹ AIR 2011 SUPREME COURT 421

amount due under the promissory note, the trial Court, relying upon the ruling 2004(2) L.S 510 in Mr.S.S.V.Prasad V. Y. Suresh Kumar and other, held that the Court at Tenali cannot have jurisdiction on the strength of the alleged assignment of the promissory note at Tenali and ordered to return the plaint to be represented in proper Court having jurisdiction.

10. Being aggrieved, the petitioner-plaintiff preferred C.M.A. urging in the grounds that the word “assignment” itself means that it is for consideration and not for collection and it is not a restrictive assignment. The wording in the assignment deed regarding the assignment is as follows:

English Version:

“You have to collect and enjoy. This Promissory Note Debt Assignment Deed is written on my consent.”

11. In *Chittaruvu Radhakrishna Murthy v. Bollapalli Chandrasekhara Rao* [1966 An. W.R. 282], it is held as follows:

“Where the rights of the plaintiff depends upon the assignment of a promissory note in his favour the assignment would constitute part of the cause of action and the Court within whose jurisdiction the assignment took place would have jurisdiction to entertain the suit on the promissory note though it was executed

at place where the original parties to it were residing and over which place a different Court had jurisdiction:.

In that ruling, it is held :

“According to Section 20(c) C.P.C., it cannot be in doubt that a suit can be instituted in a Court within the local limits of whose jurisdiction the cause of action has arisen either wholly or in part. It is no doubt true that the promissory note was executed at Guntur and that the original parties to the promissory note were also residents of Guntur. It cannot however be forgotten that the transfer of the suit promissory note has taken place at Vijayawada. Not only the endorsement was made at Vijayawada but the assignment also took place there. The question therefore which arises is whether such a transfer provides a cause of action in part at Vijayawada. I have no doubt that the endorsement of the suit promissory note and the assignment of it does give rise to a part of the cause of action at Vijayawada where admittedly the endorsement and the assignment have taken place. The endorsement and the assignment would therefore provide in part a cause of action”

12. In the ruling reported in 1969 An.W.R. 222 in P.S.Kothandarama Gupta v. Sdamsetty Vasant Kumar, it is reiterated that;

“Assignment would constitute a part of the cause of action and the Court within whose jurisdiction the assignment took place would have jurisdiction to entertain the suit. Section 70 of the N.I.Act is not a specific provision which can override the provisions contained in Section 20 CPC. Section 70 of the Act does not lay down the place where the suit has to be filed. Further, it does not deal with the case of assignment which has been held to constitute a part of the cause of action. Therefore, the Court has jurisdiction to entertain the suit”.

Both the rulings i.e. 1966 An.W.R. 282 and 1969 An.W.R. 222 cited above are considered in part 22 of the ruling 2004(2) L.S. 510, wherein held that;

“Most of the decisions touching on the subject turned on the meaning assigned to the expression ‘cause of action’ from a reading of the observation of Lord Esher, referred to above. It is evident that way-back in the year 1889, there was a strong claim from deviation from what was observed in COOKE V. GILL. The question as to whether the endorsements or the assignments, as the case may be, in those cases were made with the participation or knowledge of the makers of the promissory notes, or the original debtors, is not clear. The hardship caused to the makers of promissory notes, in being sued at a place unrelated to the making of the promissory note, was taken note of by the Calcutta High Court in Harnatharai Binraj V. Churamoni Shah (AIR 1934 Calcutta 175) and it was observed therein as follows:

“It might have been more satisfactory if the rule were otherwise i.e. that an assignee in taking an assignment of a debt should take such assignment with only such right of suing as the assignor had and could sue where the assignor could sue and nowhere else. I do see difficulties in the present system under which an assignor can create jurisdiction in any place where the Civil Procedure Code applies but I do not think it would be right for me to attempt to change it”.

13. In case of Ch. Radhakrishna Murthy v. B. Chandrasekhara Rao² this Court held as under:

“It will thus be clear that where the right of the plaintiff depends upon the assignment of a promissory note in his favour the assignment would constitute part of the cause of action and the Court within whose jurisdiction the assignment took place would have jurisdiction to entertain the suit on the promissory note. The lower Court, therefore, was obviously wrong in stating that

² 1966 An.W.R. 282

Section 20(c), as stated above, applies. In the view which I have taken it is not necessary to consider in this case whether the common law principle that the debtor must seek the creditor applies to a negotiable document or not. Consequently, the case cited in the judgment of the Court below, S.Eshwarayya v. Devi Singh, need not be considered. That case decides that the principle that the debtor must seek the creditor does not apply to a negotiable document. Since I have held that a part of the cause of action because of transfer arose at Vijayawada, it is unnecessary to consider that principle in this case. In any case, the lower Court was wrong in dismissing the suit. Even assuming the Court at Vijayawada had no jurisdiction, the Court ought to have returned the plaint for its presentation to the proper Court. The suit could not be dismissed on that ground.

For the reasons stated above, I would allow this revision petition and remit the case to the Subordinate Judge's Court at Vijayawada for the disposal of the suit on merits. The costs of this revision will depend upon the result of the suit."

14. In another case of P.S.Kothandarama Gupta v. S.Vasant Kumar³ this Court observed as under:

"...What constitutes 'cause of action' has been the subject matter of numerous cases, the leading case is Read v. Brown, which has been frequently referred to in various cases of this Court. It has been held therein that the assignment would constitute a part of the cause of action and the Court within whose jurisdiction the assignment took place would have jurisdiction to entertain the suit.

The learned counsel for the petitioner contends that as per Section 70 of the Negotiable Instruments Act, the suit is not entertainable by the Court at Hyderabad. Section 70 of the Negotiable Instruments Act reads as hereunder:-

"A promissory note or bill of exchange not made payable as mentioned in Sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual

³ 1969 An.W.R. 222

residence of the maker, drawee or acceptor thereof, as the case may be.”

With reference to the Section it is urged that it is a specific provision which over-rides the provisions contained in Section 20 CPC. I am not inclined to accept this argument. Section 70 of the N.I.Act does not lay down the place where the suit has to be filed. Further, it does not deal with the case of assignment which has been held to constitute a part of the cause of action. I think, the lower Court was justified in holding that it had jurisdiction to entertain the suit. The revision is accordingly dismissed with costs.”

15. In addition to above, this Court, in the case of Mr.S.S.V.Prasad v. Mr.Y.Suresh Kumar & Anr.⁴, observed as under:

“Therefore, it is held that the holder in due course of a negotiable instrument can present a suit to recover the amount covered by it, only in a Court within whose territorial jurisdiction the defendants therein reside or carry on business, or in a Court within whose territorial jurisdiction, the place at which such negotiable instrument, can be presented, under Sections 68 to 70 of the N.I.Act is situated.”

16. According to Section 20 (c) C.P.C., it cannot be disputed that a suit can be instituted in a Court within the local limits of whose jurisdiction the cause of action has arisen either wholly or in part. It is not in dispute that the respondent/defendant is the resident of Amudalapalli of Nizampatnam Mandal and promissory note was executed in favour of one Malisetty Raghava Rao of Nizampatnam Mandal. Even though the wife of original promisee assigned the

⁴ 2004(5) ALD 57

promissory note in question in favour of the appellant/ plaintiff at Tenali to collect and enjoy the amount due under the promissory note, the question therefore, which arises is, whether such a transfer provides a cause of action in part at Tenali.

17. As decided in the case of P.S.Kothandarama Gupta (supra 3), the assignment would constitute a part of the cause of action and the Court within whose jurisdiction the assignment took place, would have jurisdiction to entertain the suit.

18. Section 70 of the Negotiable Instruments Act is not a specific provision which can over-ride the provisions contained in Section 20 CPC. Section 70 of N.I. Act does not lay down the place where the suit has to be filed. More over, it does not deal with the case of assignment which has been held to constitute a part of the cause of action. It will thus be clear that where the right of the plaintiff depends upon the assignment of a promissory note in his favour, the assignment would constitute part of the cause of action and the Court within whose jurisdiction the assignment took place, would have jurisdiction to entertain the suit on the promissory note.

19. In view of above discussion and the legal position, we are of the considered view that the learned Court has gravely

erred in relying on the decision in the case of S.S.V.Prasad v. Y.Suresh Kumar (supra 4).

20. Accordingly, we hold that the Court at Tenali has jurisdiction to try the suit in question. Consequently, the decree and decretal order dated 19.04.2006 made in C.M.A.No.12 of 2005 passed by the Additional Senior Civil Judge, Tenali, confirming the order dated 12.04.2005 made in C.F.R.No.12208 of 2004 passed by I-Additional Junior Civil Judge, Tenali for returning the plaint for presenting in proper Court, is hereby set aside. Accordingly, the petitioner is at liberty to present the suit before the Court at Tenali, upon which, the said Court is directed to try the suit after giving proper opportunity to both the parties.

21. Revision petition is accordingly allowed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

N. BALAYOGI, J

5th September, 2017

N.B: L.R. copy be marked.

(b/ o)
bcj/ ajr