

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CCCA.No.413 of 2018

ORDER:

Submissions of the learned senior counsel appearing for the 3rd party/ claim petitioner/ appellant and of the learned counsel appearing for the 1st respondent-DHr are heard.

2. The facts, in brief, are as follows:

The 1st respondent / Decree Holder (DHr) obtained a decree against the respondents 2 to 4/ Judgment Debtors (JDrs) in O.S.no.161 of 1989 and filed EP 90 of 2007 on the file of the Court of the learned IV Senior Civil Judge, City Civil Court, Hyderabad. The appellant herein/ claim petitioner filed a claim petition in E.A.no.307 of 2014 under Order XXI Rules 58 and 99 to 104 of the Code of Civil Procedure, 1908, requesting to adjudicate its right, title and interest over the EP schedule property and declare that the petitioner/ appellant is the absolute owner of the schedule property. The DHr resisted the said claim petition. After full-fledged enquiry, the Court below dismissed the claim petition. Aggrieved thereof, the unsuccessful claim petitioner filed the instant appeal.

3. I have given earnest consideration to the facts & submissions on the limited aspect of the jurisdiction of this Court to entertain this instant appeal.

4. It is to be first noted that appellant/ claim petitioner filed before the Court below, a claim petition under Order XXI Rule 58 of the Code. Learned Senior Civil Judge dismissed the said claim petition. Hence, the appellant, who is the unsuccessful claim petitioner, filed this instant appeal assailing the said order. In the above stated factual back drop, it is apt to first refer to the relevant legal position laid down in the Full Bench decision of this Court in

Gurram Seetharam Reddy vs. Guntty Yashoda¹. Indeed, a Division Bench of this Court expressed the view that the judgment in B. Noorkaraju v. M.S.N. Charities, [AIR 1994 AP 334] needs reconsideration. It related to the interpretation of Clause (4) of Rule 58 of Order XXI, CPC. While making a reference, the Division Bench framed the question as under: "Whether, against an order passed under Order XXI, Rule 58 of the Code in respect of a claim or objection to the attachment of property, a regular appeal would lie as an appeal against the decree, or, a Miscellaneous Appeal against the order?" While answering the said question, the Full Bench of this Court held as follows:

(a) Against the orders passed under Rule 58 (3) and Rules 98 and 100 of Order XXI, CPC regular appeals under Section 96 and not miscellaneous appeals under Section 104 read with Order XLIII, Rule 1, CPC are maintainable and that the judgment of this Court in Nookaraju's case (supra) does not represent the correct position of law.

(b) The Court fee payable on such appeals shall be the one calculated in accordance with Article 11 (i) or 3 (i) of Schedule II of Court Fees Act, as the case may be read with Section 49 of the AP Court Fees and Suits Valuation Act.

(c) A second appeal under Section 100, CPC is maintainable against an order passed in an appeal, arising out of order passed under Rule 58 (3) or Rules 98 and 100 of Order XXI, CPC.

Thus, as per the settled legal position, there is no dispute in regard to the proposition that a regular appeal filed under Section 96 of the Code is maintainable against the orders dismissing the claim petition filed under Order XXI Rule 58 of the Code.

5. It is to be now noted that Clause (i) of Article 11 of Schedule II of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956, reads as under:

¹ 2004 (6) ALT 111

Article	Particulars	Proper fee
(1)	(2)	(3)
11	(i) Application or petition under Section 47 and Order XXI, Rule 58 and 90 of the Code of Civil Procedure, 1908 -- (i) When filed in a Revenue Court or a District Munsiff's Court; (ii) when filed in a subordinate Judge's Court or a District Court; (iii) When filed in the High Court	One rupee Two rupee Five rupees

It is apt to note that the legislature in its wisdom fixed the fixed Court fee on the basis of the Court in which the claim petition is to be filed. As per the Full Bench decision of this Court in an appeal filed against an order dismissing a claim petition, fixed court fee is payable on the relief, as specified in the above mentioned provision of law. In the case on hand, the question precisely is not about either the valuation of the relief or the court fee payable; but, the question is this: – ‘Whether the instant appeal assailing an order passed by the learned Senior Civil Judge dismissing a claim petition filed under Order XXI Rule 58 of the Code would lie before the District Court or this Court?

6. Section 17 of the Andhra Pradesh Civil Courts Act, 1972, (as it stood after its amendment (*vide* the Amendment Act 16 of 2005) reads as under.

Section 17. Appeals from the decrees and order of Court in the District:-

- (1) An appeal shall, when it is allowed by law, lie from any decree or order in a civil suit or proceeding---
- (i) of the District Court, to the High Court;
- (ii) of the Court of Subordinate Judge-
- (a) to the District Court, when the amount or value of the subject -matter of the suit or proceeding is not more than rupees five lakhs;

(b) to the High Court, in other cases; and

(iii) of the Court of District Munsiff, to the District Court."

The decisive words used in the above Section 17 are - 'the amount or value of the subject-matter of the suit or proceeding'. Therefore, if the appeal against the decree passed in the suit were to lie to the District Court, then, the appeal of the instant nature would lie to the District Court. If the said appeal against the decree passed in the suit were to lie to the High Court, the appeal of the instant nature will have to be entertained by this Court. Therefore, the decisive factor is the Jurisdictional Court, that is, the Court, which is competent to entertain the appeal against the decree passed in the original suit. To put it in other words, the Court having jurisdiction to entertain the appeal against the decree passed in the original suit is the competent Court to entertain the appeal against the order passed in a claim petition filed under Order XXI Rule 58 of the Code. In the case on hand, since the Senior Civil Court is within the unit of City Civil Court, instead of the words 'District Judge', the words 'Chief Judge, City Civil Court' have to be appropriately read into the provision. The decree passed in the original suit (O.S.no.161 of 1989) reflects that the value of the subject matter of the suit is Rs.3,16,200/-.

7. Hence, the Registry is directed to return the appeal [CCCA with its enclosures] to the appellant, as per procedure, to enable it to examine the jurisdictional issue with reference to the legal position enunciated supra and accordingly present the appeal to the appropriate Court having jurisdiction to entertain such an appeal. However, in the interests of justice, both the parties are directed to maintain absolute *status quo* till 06.12.2018.

M. SEETHARAMA MURTI, J

03.12.2018

Note:- Issue CC today

(B/ o)

Vjl