

Karnataka High Court

A.B. Vishalamma vs A.B. Siddamallappa And Others on 6 August, 2001

Equivalent citations: ILR 2002 KAR 3435, 2001 (5) KarLJ 636

Bench: N Kumar

ORDER The Court

1. Respondents 1 and 2 who are the plaintiffs in the Court below filed a suit O.S. No. 47 of 1985 against the petitioner herein and the third and fourth respondents for the relief of partition and separate possession of their legitimate share in the suit schedule property. The suit was valued at Rs. 45,000.00 and therefore it was filed before the learned Civil Judge (Senior Division) as the pecuniary jurisdiction of the Civil Judge (Junior Division) was Rs. 10,000.00 as on that date. The said suit was decreed ex parte. The defendants preferred a First Appeal against the judgment and decree before this Court. During the pendency of the appeal before this Court there was an amendment to the Karnataka Civil Courts Act by virtue of which the jurisdiction to decide appeals of the value to the extent of Rs. 1,00,000.00 was conferred on the District Court. Consequently, this Court transmitted the appeal pending before it to the District Court at Chickmagalur. The judgment and decree of the Trial Court was set aside by the District Court and the matter was remanded to the Civil Judge (Senior Division) for fresh disposal in accordance with law. Thereafter, defendants filed a joint written statement. There was conflict of some interest between them. Therefore, they were permitted to file separate written statements. After filing of the written statements they took up a contention that the said Court has no pecuniary jurisdiction. Therefore, one issue regarding pecuniary jurisdiction was framed and it was tried as a preliminary issue. On the said preliminary issue the Court held that it has no pecuniary jurisdiction. Thereafter, third defendant filed an application under Order 7, Rule 10 of the CPC for return of the plaint to be presented to the proper Court. The said application was allowed and the plaint was returned for presentation before the appropriate Court. The plaint was presented before the learned Civil Judge (Junior Division) as the pecuniary jurisdiction of the said Court was enhanced to Rs. 50,000.00 by virtue of the Karnataka Civil Courts Laws (Amendment) Act, 1989. In the said proceedings third defendant has made the present application LA. No. VII under Section 151 of the CPC seeking (1) to allow the third defendant to file a fresh statement, (2) try the case once again, and (3) discontinuing the continuation of previous suit in recording evidence and further trial. The said application was opposed by the plaintiff. The learned Judge on consideration of the rival contentions has rejected the said application. It is against the said order the present revision is filed.

2. Sri N.D.R. Ramachandra Rao, learned Counsel for the petitioner, contends the learned Civil Judge (Senior Division) recorded a finding that the said Court has no pecuniary jurisdiction to entertain the suit and returned the plaint for presentation before the proper Court and the proceedings before that Court till that date becomes a nullity and the learned Civil Judge (Junior Division) should proceed from the stage of presentation of the plaint, as such the defendant's request for such a course has been wrongly rejected. Elaborating the said contention he submitted even in cases where initially the Court had the jurisdiction to entertain the matter but by a subsequent event whether by operation of law or in any other manner if that Court is held to be without jurisdiction, in law there is no distinction and all the proceedings before that Court would be one without jurisdiction and the transferee Court should hold a de novo enquiry. In that view of

the matter he submits the impugned order is liable to be set aside.

3. Sri Desai, learned Counsel for the respondent, contends this is not a case of return of plaint for presentation to the proper Court under Order 7, Rule 10 of the CPC. On the date the suit was filed, the learned Civil Judge (Senior Division) had the pecuniary jurisdiction to entertain this suit. It is only by operation of law with an amendment to the Karnataka Civil Courts Act the jurisdiction of the Court is taken away and therefore it is a case of transfer of that case from Civil Judge (Senior Division) to Civil Judge (Junior Division) and the learned Civil Judge (Senior Division) has to proceed with the case as if the proceedings had been instituted or commenced in such Court. In that view of the matter the question of permitting the defendants to file written statement afresh in that Court would not arise and the Court below was justified in rejecting such a request.

4. In order to appreciate the rival contentions it is necessary to look into the relevant provisions of the Amendment Act to the Karnataka Civil Courts Laws. Section 3 of the Amendment Act reads as under.-

"3. Amendment of Karnataka Act 21 of 1964.--In the Karnataka Civil Courts Act, 1964 (Karnataka Act 21 of 1964).-

(a) in Section 17, for the words "ten thousand rupees", the word "fifty thousand rupees" shall be substituted;

(b) in Section 19, in clause (i), for the words "twenty thousand rupees", the words "one lakh rupees" shall be substituted".

Section 4 deals with transfer of suits and appeals. Sub-clause (b) of sub-section (1) reads as under.-

"(b) Original suits and proceedings of a civil nature the amount or value of the subject-matter of which does not exceed fifty thousand rupees pending before the Court of a Civil Judge shall, on the date of commencement of this Act, stand transferred to the Court of the Munsiff and shall be disposed of by such Court in accordance with law as if such suits or proceedings concerned had been instituted, or commenced in such Court".

5. A perusal of the aforesaid provisions makes it clear that original suits and proceedings of a civil nature the amount or value of the subject-matter of which does not exceed Rs. 50,000.00 pending before the Court of a Civil Judge shall, on the date of the commencement of the Amendment Act, stand transferred to the Court of the Munsiff (learned Civil Judge, Junior Division), and shall be disposed of by such Court in accordance with law as if such suits or proceedings concerned had been instituted or commenced in such Court. In view of the language employed in the aforesaid section it becomes clear that though suits are not filed in the Court to which they are transferred, because of the amendment, in law it shall be deemed to have been instituted or commenced in such Court. Therefore, it cannot be said that the Court in which it was instituted, merely because its jurisdiction is taken away by operation of law, all the proceedings which took place in the said Court would be wiped out and would become a nullity. When the said proceedings were initiated and commenced in

a Court which had the jurisdiction on the date of transfer would be treated as having been commenced or instituted in the transferee Court and therefore no stage of the proceedings would be said to be one without jurisdiction, nullity or void. Under those circumstances the question of holding de novo enquiry in the transferee Court would not arise.

(emphasis supplied)

6. In this background if we analyse the facts of this case when the plaintiff filed the suit in the learned Civil Judge's Court of Senior Division that Court had the pecuniary jurisdiction to entertain the suit as in law suits of the value of Rs. 50,000.00 could have been entertained by the said Court. By way of an amendment the jurisdiction of Munsiff/Civil Judge (Junior Division) was increased to Rs. 50,000.00. It is by virtue of that amendment the learned Civil Judge (Senior Division) lost the pecuniary jurisdiction to entertain a suit of value of Rs. 50,000.00. Therefore, by operation of law such suit was transferred to the Civil Judge (Junior Division). In view of the language employed in Section 4 of the Amendment Act though the said suit was initiated before the learned Civil Judge (Senior Division) it shall be deemed to have been instituted and commenced before the learned Civil Judge (Junior Division) and therefore no part of the proceedings of that suit would become a nullity in the eye of law. Without properly appreciating this legal position an issue regarding pecuniary jurisdiction was raised and it was answered by the learned Civil Judge (Senior Division) holding that he has no jurisdiction. This is not a case where the plaintiff had filed the suit in a Court which had no jurisdiction. That Court lost the jurisdiction because of the amendment to the existing law. Added to that when the Court declared that it had no jurisdiction, the defendant filed an application which was granted and the plaintiff without knowing the implication has taken back the plaint and presented the suit before the learned Civil Judge (Junior Division). These acts of the parties cannot in any way affect the jurisdiction of the Court. As the parties by consent cannot confer jurisdiction, by their conduct also they cannot impair the jurisdiction of the Court. The aforesaid finding of the learned Civil Judge (Senior Division) and the order passed under Order 7, Rule 10 of the CPC are all totally irrelevant and superfluous. With the operation of law the Civil Judge (Senior Division) lost his jurisdiction and by operation of law suit pending before him stood transferred to the learned Civil Judge (Junior Division). In that view of the matter the question of granting permission to the defendant to file fresh written statement before the transferee Court would not arise. The written statement filed in the earlier Court would hold good even in the transferee Court and as trial is yet to begin, the defendants are in no way affected by such transfer. If at all they wanted to raise any additional pleas it is always open to them to seek for amendment of the written statement already on record and contest the suit on its merits. Under these circumstances, I do not find any infirmity in the order passed by the Court below which calls for interference. Hence, there is no merit in this civil revision petition. Accordingly, it is dismissed.

7. Parties to bear their own costs.