

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10589 OF 2014
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 3960 OF 2007)

DR. K.P.RANGA RAO

...APPELLANT(S)

VERSUS

K.V.VENKATESHAM & ORS.

...RESPONDENT(S)

O R D E R

1. Heard learned counsel for the parties and perused the relevant material.

2. Leave granted.

3. The appellant-plaintiff herein has filed a suit for specific performance basing his claim on an Agreement dated 2nd November, 1975. The plaint was amended and the prayer for specific performance is set out thus:

"The plaintiff therefore prays that this Hon'ble Court may be pleased to pass a decree for specific performance in favour of the plaintiff directing all or such of the defendants as the Hon'ble Court may deem fit to join in and execute a sale deed with respect to suit schedule property falling which the Court may execute the same and deliver vacant possession to the Plaintiff by removing or evicting the defendants and all persons claiming through them and their servants agents from the suit schedule property and remove any

structure or constructions made by them or for such other reliefs as this Hon'ble Court may deem fit and proper and costs of the Suit (Amended as per orders in I.A. No. 259/91 dated 31.03.1992)".

A written statement was filed by Defendants Nos. 1 to 3 on 10th February, 1982 in para 1 of which they raised the plea that the Second Additional Judge, City Civil Court, Hyderabad, had no territorial jurisdiction to decide the suit inasmuch as the property of which specific performance is sought is in Medak District.

4. On this preliminary issue, the Second Additional Judge, City Civil Court vide its judgment dated 8th September, 1986 held that the relief of specific performance could be entirely obtained through personal obedience of defendant nos. 1 and 2 and since defendant nos. 1 and 2 are residing in Hyderabad (over which the Hyderabad Court had jurisdiction) therefore there is territorial jurisdiction. Against this order, a Revision Petition was preferred, which was also dismissed on 26th September, 1986.

5. After these orders were passed, the Trial Court ultimately decreed the suit vide its judgment dated 28th June, 1996 in which this preliminary issue was again adverted to and it was stated this has already been decided as a preliminary issue finally.

6. In the first appeal against the decree, it was again contended that there is no territorial jurisdiction in the Court at Hyderabad inasmuch as the Supreme Court Judgment had now intervened, which is reported in Harshad Chiman Lal Modi Vs. DLF Universal Ltd. And Another (2005) 7 SCC 791. This judgment, after considering Sections 16 and 20 of the Code of Civil Procedure, held that :

"15. Now, Sections 15 to 20 of the Code contain detailed provisions relating to jurisdiction of courts. They regulate forum for institution of suits. They deal with the matters of domestic concern and provide for the multitude of suits which can be brought in different courts. Section 15 requires the suitor to institute a suit in the court of the lowest grade competent to try it. Section 16 enacts that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or

interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. Proviso to Section 16 declares that where the relief sought can be obtained through the personal obedience of the defendant, the suit can be instituted either in the court within whose jurisdiction the property is situate or in the court where the defendant actually or voluntarily resides, or carries on business, or personally works for gain. Section 17 supplements Section 16 and is virtually another proviso to that section. It deals with those cases where immovable property is situate within the jurisdiction of different courts. Section 18 applies where local limits of jurisdiction of different courts is uncertain. Section 19 is a special provision and applies to suits for compensation for wrongs to a person or to movable property. Section 20 is a residuary section and covers all those cases not dealt with or covered by Sections 15 to 19.

16. Section 16 thus recognizes a well established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. Proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the

personal obedience of the defendant. The proviso is based on well known maxim "equity acts in personam, recognized by Chancery Courts in England. Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam, i.e. by arrest of defendant or by attachment of his property.

17. In *Ewing v. Ewing*, (1883) 9 AC 34 : 53 LJ Ch 435, Lord Selborne observed :

"The Courts of Equity in England are, and always have been, courts of conscience operating in personam and not in rem; and in the exercise of this personal jurisdiction they have always been accustomed to compel the performance of contracts in trusts as to subjects which were not either locally or *ratione domicilli* within their jurisdiction. They have done so, as to land, in Scotland, in Ireland, in the Colonies, in foreign countries."

18. The proviso is thus an exception to the main part of the section which in our considered opinion, cannot be interpreted or construed to enlarge the scope of the principal provision. It would apply only if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant.

19. In the instant case, the proviso has no application. The relief sought by the plaintiff is for specific performance of agreement respecting immovable property by directing the defendant No. 1 to execute sale-deed in favour of the plaintiff and to deliver possession to him. The trial court was, therefore, right in holding that the suit was covered by clause (d) of Section 16 of the Code and the proviso had no application".

7. It was thus contended before the High Court in appeal that this Judgment covers the present fact situation and that notwithstanding that the preliminary issue has been decided finally in favour of the plaintiff, yet the judgment would have to be followed. The High Court accepted this plea and followed this judgment holding that the Court in Hyderabad had no territorial jurisdiction. As a result the appeal was allowed and the plaint was ordered to be filed in the appropriate Court.

8. Section 21 of the Code of Civil Procedure reads as under:

21. Objections to jurisdiction.- (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection taken in the executing court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

9. Based on this Section, counsel for the appellant argued that there are three prerequisites for the applicability of the Section and cited the judgment in Pathumma (Daughter of Koopilan Uneen) and Ors. Vs. Kuntalan Kutty and Ors. (1981) 3 SCC 589. It was argued that even if

an objection was taken at the very first opportunity and before issues are settled, there has also to be a consequent failure of justice before the plea of jurisdiction can succeed before the Appellate Court. Learned counsel for the respondents on the other hand stated that once Section 16 is attracted, Section 21 would not be attracted at all, and further went on to argue that the consequence of holding territorial jurisdiction in favour of the plaintiff would spill over to other suits that are pending between the parties.

10. We find that Pathumma (supra) really concludes the matter before us. In paragraphs 5 and 6 of the judgment, it is stated as under:

"5. In order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfilment of the following three conditions is essential:

(1) The objection was taken in the court of first instance,

(2) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement,

(3) There has been a consequent failure of justice.

6. All these three conditions must co-exist. Now in the present case Conditions 1 and 2 are no doubt fully satisfied; but then before the two appellate courts below could allow the objection to be taken, it was *further necessary that a case of failure of justice on account of the place of suing having been wrongly selected was made out*. Not only was no attention paid to this aspect of the matter but no material exists on the record from which such failure of justice may be inferred. We called upon learned counsel for the contesting respondents to point out to us even at this stage any reason why we should hold that a failure of justice had occurred by reason of Manjeri having been chosen as the place of suing but he was unable to put forward any. In this view of the matter we must hold that the provisions of the sub-section above extracted made it imperative for the District Court and the High Court not to entertain the objection whether or not it was otherwise well founded. We, therefore, refrain from going into the question of the correctness of the finding arrived at by the High Court that the Manjeri Court had no territorial jurisdiction to take cognizance of the application praying for final decree".

11. Obviously Section 21 will apply in the three situations mentioned therein. The first situation refers to the place of suing. The second situation refers to pecuniary limits of the Court's jurisdiction and the third refers to local limits of the Court's jurisdiction. In each of these cases it is stated that an Appellate Court or Revisional Court shall not allow an objection to the place of suing (which refers to Section 16 in the present case) unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or

before such settlement. What follows is important. An objection as to place of suing cannot be allowed unless there has been a consequent failure of justice.

12. In a classic exposition of the law, in Kiran Singh and Others Vs. Chaman Paswan and Others 1955 SCR 117, after stating that a defect of jurisdiction strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties, the law has been laid down as follows:

“.....The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the Legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits”.

13. In the present case, we find this statement of law would apply on all fours. The judgment of the Trial Court has been decided issue wise, on the merits, after hearing both parties. The suit has finally been decreed. Consequently this judgment cannot be reversed purely on technical grounds unless there is a failure of justice, which we have seen, is nobody's case.

14. The High Court had not adverted to this aspect of the matter at all and this being the case, we set aside the judgment dated 1st August, 2006 passed by the High Court and restore the various appeals to the file of the High Court to be disposed of on merits.

15. The appeal is disposed of in the above terms.

.....J.
[RANJAN GOGOI]

NEW DELHI
25TH NOVEMBER, 2014

.....J.
[ROHINTON FALI NARIMAN]

ITEM NO.4

COURT NO.8

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 3960/2007

(Arising out of impugned final judgment and order dated 01/08/2006 in AN No. 78/1996, AN No. 130/1998 AND AN No. 130/2000 passed by the High Court Of A.P. At Hyderabad)

K.P.RANGA RAO

Petitioner(s)

VERSUS

K.V.VENKATESHAM & ORS.

Respondent(s)

(With interim relief and office report)

Date : 25/11/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. Guntur Prabhakar,Adv.

For Respondent(s) Mr. P. Niroop,Adv.
Mr. Chandan Kumar,Adv.
Mr. Manoj C. Mishra,Adv.
Mr. Anil Kumar Tandale,Adv.

Mr. D. Mahesh Babu,Adv.

Mr. Pratap Venugopal,Adv.

Ms. Supriya Jain,Adv.

Mr. Gaurav Nair,Adv.

M/s. K. J. John & Co.,Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

(MADHU BALA)
COURT MASTER

(ASHA SONI)
COURT MASTER

(Signed order is placed on the file)