HIGH COURT OF ANDHRA PRADESH

TUESDAY ,THE FIFTH DAY OF JANUARY

TWO THOUSAND AND TWENTY ONE

PRSENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

FIRST APPEAL NO: 302 OF 2018

Between:

1. P.SREENIVASULU s/o. Sri Peddisetty Ramanujulayya,
   Aged 50 years,
   R/o. D.No.18-3-56A4,
   Shanti Nagar, Khadi colony,
   Near Anna Rao circle, Tirupathi
   517501

...PETITIONER(S)

AND:

1. E.DURVASULA NAIDU AND 16 OTHERS S/o. E.Rangaiah Naidu
   Aged 60 years, Occ- Cultivation R/o.Timmainaidu Palem Village
   Chandragiri Taluk,Chitoor District, Andhra Pradesh.
2. E.Rangaiah Naidu (died) Chittoor District
3. E .Yengamma D/o. E.Rangaiah Naidu
   Aged 60 years, Occ- Cultivation, R/ o. Timmainaidu Palem Village
   Chandragiri Taluk,Chitoor District, Andhra Pradesh
4. E.Neelamma (died) Chittoor District
5. P. Subba Naidu S/o. P.Venkatarama Naidu Aged 60 years, Occ-Cultivation, R/o. Akkaramapalle Village, Chandragiri Taluk,Chitoor District, Andhra Pradesh
6. K.Adivi Naidu (died) Chittoor District
7. A.Jayaramaiah S/o. Rosaiah,
   Aged 80 years,
   Occ- Retd. Govt Employee and Agriculturist,
   R/o.D.No.13-7-950-C,
   Korlagunta Road, Tirupati, Chitoor District,
   Andhra Pradesh.
8. A.Munemma (died) Chittoor District
9. K. Rama Naidu S/o. Srinivasulu Naidu,
   Aged 68 years, R/o. D.No.4-51, Thimminaidupalem, Karakambadi Road,
   Tirupati, Chitroor District, Andhra Pradesh.
10. K.Lakshamiah Naidu S/o. K. Srinivasulu Naidu
    Aged 65 years,
    R/o.D.No.4-51, Thimminaidupalem,
    Karakambadi Road,
    Tirupati, Chitroor District,
    Andhra Pradesh.
11. K. Subramanyam S/o. Ramaiah
    Aged 70 years,
    R/o.D.No.4-55, Thimminaidupalem,
    Karakambadi Road,
    Tirupati, Chitroor District,
    Andhra Pradesh.

12. K.Bhaskaraiah S/o. Ramaiah
    Aged 60 years,
    R/o.D.No.4-55, Thimminaidupalem,
    Karakambadi Road,
    Tirupati, Chittoor District,
    Andhra Pradesh.
13. P.Rajamma(died) Chittoor District
14. S.Amruthavalli W/o. Venkateshwara Prasad.
    rep. by her GPA holder,
    S.Harish S/o.Venkateshwara Prasad,
    Aged about 63 years, Occ- Business,
    R/o. D.No.6-2-91, Flat No. 201,202,2nd Floor,
    Old MH Road, Bhavaninagar, Tirupati,
    Chitoor District, Andhra Pradesh.
15. S.Hima Bindu W/o. CH.Satish,
    rep. by her GPA holder,
    S.Harish S/o.Venkateshwara Prasad,
    Aged about 63 years, Occ- Business,
    R/o. D.No.6-2-91, Flat No. 201,202,2nd Floor,
    Old MH Road, Bhavaninagar, Tirupati,
    Chitoor District, Andhra Pradesh.
16. Kasturi W/o. Late Ipala Venkatramaiah, Aged 70 years, Occ- Housewife. R/ o.D.No.5-256/ B, Ullipatteda, M.R.Palle, Tirupati, Chitoor District, Andhra Pradesh.
17. Y.B.Bapuji Alias Y.Bala Suresh Bapuji S/o. Late Jayaramaiah,
    Aged 50 years,
    R/ o.D.No.5-256/ B, Ullipatteda,
    M.R.Palle, Tirupati, Chitoor District,
    Andhra Pradesh.

...RESPONDENTS

Counsel for the Petitioner(s): VIVEK CHANDRA SEKHAR S

Counsel for the Respondents: M R S SRINIVAS

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

And

THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO

A.S.No.1361 of 2017
And
A.S.Nos.302 & 379/2018

COMMON JUDGMENT: (per Hon'ble Sri Justice R. Raghunandan Rao)

The brief facts of the case are:

One Durvasula Naidu had filed O.S.No.2 of 1975 in the Court of the Additional Senior Civil Judge, Tirupati, against his father Sri Enugu Rangaiah Naidu (Defendant No.1), his mother Smt. Enugu Yengamma (Defendant No.2), his sister Smt. Yenugu Neelamma (Defendant No.3), Sri Pulivanthi Subba Naidu (Defendant No.4) and Sri Killa Adivi Naidu (Defendant No.5) for partition of properties described in Schedule B, C and D annexed to the Plaint, on the ground that they were joint family properties. Defendant No.4 and 5 were arrayed as parties to the suit as they are said to be nominal purchasers of certain extents of land in Schedule B and C from Sri Enugu Rangaiah Naidu. Shedule B consisted of about 25 Acres of Land and Schedule C consisted of Ac.6.84 cents of land in various survey numbers of Thimminaidupalem Village, Chittoor District. Schedule D was livestock consisting of Two Bullocks and one Buffalo and at this point of time is irrelevant. The suit was valued at one place in the Plaint at Rs.30,000/- for the purposes of Jurisdiction and Court fees and in the "Particulars of Valuation" in the Plaint it was shown at Rs.22,625/-. This valuation assumes importance as we proceed with the case.

2. The Trial Court passed an ex parte Preliminary decree on 24.04.1982. Under this decree, the trial court had directed that Item No.1

of Schedule B and C, be divided by metes and bounds into two equal shares, taking the good and bad qualities thereon, and deliver one such share to the plaintiff, and the remaining half share to be divided to the 1st defendant.

3. The 5th respondent filed an application to get the ex parte decree set aside but was not successful and the preliminary decree became final. In the meanwhile, the plaintiff filed I.A. No. 626 of 1983 for passing a final decree, and a part final decree, distributing the lands in Schedule B and C came to be passed on 04.06.1990.

4. Aggrieved by the said part final decree, the plaintiff filed A.S.No.2391 of 1990 and the 1st defendant filed A.S.No.1183 of 1991 before the erstwhile High Court of Andhra Pradesh. By a common order dated 16.08.1991, in A.S.No.2391 of 1990, a learned single Judge had set aside the order of the Trial Court and dismissed A.S.No.1183 of 1991.

5. Aggrieved by the said order, the Plaintiff filed L.P.A.No.261 of 1991, which was dismissed on 24.08.1994. Against this order, the Defendant No.5 in the suit approached the Supreme Court, by way of Civil Appeal No.8416 of 1995, which was allowed in part and remanded to the Trial Court, by order dated 11.09.1995, with the following observation:

"Having considered the respective contentions, we are of the view that since the preliminary decree was allowed to become final, the trial Court need to give effect to it. It is settled law that alienees of the alinees have no right to equities. Equally, it is settled law that a coparcener has no right to sell his undivided share in the joint family property and any sale of undivided and specified items does not bind the other coparceners. Since the specific properties were purchased prior to the institution of the suit for partition, though the

appellants have no right to equities, it could be said that the respective share to which their principal alienor was entitled would be allotable to them as a special case. However, since the preliminary decree specifically directed that the good and bad qualities of the land should be taken into consideration in effecting the partition. It should in letter and spirit, be given effect to while passing final decree, if the lands purchases by the appellants are found more valuable than the land to be allotted to the respondents, the respective values thereof should be ascertained and the respondents need to be compensated in monetary value. That would be the effect of the preliminary decree as well. Considered from this perspective, the direction issued by the Division Bench would be modified above, and the trial Court would pass the final decree accordingly.

The appeal is allowed in part as above. Parties are directed to bear their own costs."

6. Upon remand, I.A.No.359 of 2012 was taken up by the trial court for passing a final decree. The application was initially filed with only the original defendants arrayed as Respondents No.1 to 5. During the pendency of the application, respondents 6 to 12, 15 and 16 were added, by the orders of the trial court. The implead applications of Respondents No.13 and 14 were rejected by the trial court. In Civil Revision Petition Nos.5710, 5772 and 5801 of 2012, filed against the said order of rejection, the erstwhile High Court of Andhra Pradesh set aside the said orders of rejection. Consequently, the trial court added Respondents Nos.13 and 14.

7. The trial Court appointed an advocate Commissioner, who submitted a report dated 07.01.2009 proposing the division of the schedule B and C properties. After hearing the parties to the litigation and after considering the report of the advocate commissioner, the trial court

passed a final decree on 12.10.2017. Aggrieved by the said Final decree, three appeals, being A.S.No.1361 of 2017, A.S.No.302 of 2018 and A.S.No.379 of 2018 have been filed before this Court.

8. The appellants in A.S.No.1361 of 2017 and A.S.No.302 of 2018 are purchasers of land from the persons, who trace to their title from the 1st defendant in the suit, by way of sale. The appellant in A.S.No.302 of 2018 is the purchaser of land from the persons, who trace to their title from the plaintiff in the suit by way of sale. During the pendency of the appeals, I.A.No.1 of 2019 was filed for an injunction restraining construction activity in the suit schedule property. This Court had disposed of the application with an observation that any constructions made in the schedule property will not give rise to any equities. Aggrieved by the same S.L.P.(Civil).Dairy.No.17771 of 2020 was filed before the Hon'ble Supreme Court. The same was disposed of by the Hon'ble Supreme Court, requesting this Court, by order dated 11.09.2020, to finally decide the appeal, preferably within a period of three months from the date of the order.

9. Upon receipt of the said orders of the Hon'ble Supreme Court, this Court had taken up these matters. It was found that some of the respondents in the appeals had not been served with notices. In the circumstances, this Court, by order dated 10.12.2020, had directed service of notice by publication in the newspapers. The same was carried out.

10. Sri Ch. Venkat Raman, represented by Sri Ambalipudi Satyanarayana, learned counsel for the appellants/defendants 8 to 11 in A.S.No.1361 of 2017; Sri Vivek Chandra Sekhar. S, learned counsel for the

appellant/third party in A.S.No.302 of 2018; and Sri A. Prabhakara Sarma, learned counsel for the appellant/third party in A.S.No.379 of 2018; Sri K.G. Krishnamurthy, Learned Senior Counsel appearing for respondent No.1 (A.S.No.1361/2017); Sri M.R.S. Srinivas, learned counsel appearing for the 1st respondent-plaintiff in A.S.Nos.379 of 2018; Sri K. Koutilya represented by Sri M. Chalapati Rao, Sri S. Ashok Anand Kumar, Sri S. Srinivas Reddy, Sri P. Veerraju, Sri Dasari S.V.V.S.V. Prasad, were heard on 23.12.2020, 28.12.2020, 29.12.2020 and 30.12.2020.

11. The purchasers, from the parties to the suit, were aggrieved by the final decree on the ground that the division by metes and bounds done by the trial court was not in accordance with the directions of the Hon'ble Supreme Court contained above. The case of the purchasers is that, the trial Court ought to take into account the purchases made by third parties from the parties to the suit and carry out the division of land in such a way that the purchasers can retain the land purchased by them. The Plaintiff on the other hand is contending that the division made in the final decree is in compliance of the directions of the Hon'ble Supreme Court. The Plaintiff has also raised various grounds, including the maintainability of the appeals themselves.

12. Before we could consider these issues and contentions, Sri M. Chalapathi Rao had raised an issue of maintainability of these appeals that would need to be considered before taking up the appeals on their merits. His contentions, are:-

13. In the Plaint, the suit was valued at Rs. 22,625 and a fixed Court fee of Rs.200 was paid. However, in the present appeals,

A.S.No.1361 of 2017 is valued at Rs.3,00,00,000/-, A.S.No.302 of 2018 is valued at Rs.1,86,00,000/-, A.S.No.379 of 2018 is valued at Rs.10,26,00,000/-. These valuations cannot be accepted as Section 49 of the A. P. Court Fees and Suit Valuation Act, 1956 clearly stipulates that the valuation given originally in the suit would continue to be the valuation of all further appeals.

14. Once the original valuation of Rs.22,625/- is taken into account, the appeals would not be maintainable before this Court, inasmuch as, the pecuniary jurisdiction for appeals, as stipulated under Section 17 of the Civil Courts Act, would require the present appeals to be filed before the appropriate District Court. The respondents, in these appeals, who are represented by Sri M. Chalapati Rao, had also filed an appeal against the final decree before this Court. This appeal was returned on the ground that the appeal was not maintainable before this Court and would have to be filed before the appropriate District Judge. Accordingly the respondents had filed A.S.No.5 of 2020 before the V Additional District Judge, Tirupati. In view of the fact that the present appeals are not maintainable before this Court in view of Section 17 of the Civil Courts Act, and in view of the pendency of A.S.No.5 of 2020 before the V Additional District Judge, Tirupati, it would be appropriate to return these appeals to the appellants for filing the same before the appropriate District Judge.

15. Sri M. Chalapati Rao relied upon the judgment of a larger Bench of the erstwhile High Court of Andhra Pradesh reported in **Vallabhaneni Lakshmana Swamy & anr., v. Valluru Basavaiah &**

Ors.,[1] and a subsequent Division Bench judgment of the erstwhile High Court of Andhra Pradesh in **Bank of India, Visakhapatnam v. Begi Venkateswara Rao & Ors**.,[2].

16. In reply, Sri K.G. Krishna Murthy, learned Senior Counsel appearing for the 1st respondent-plaintiff in A.S.No.1361 of 2017, submits as follows:

Section 51 of the A.P. Court Fees and Suits Valuation Act, 1956, which is a reiteration of Section 21(2) of C.P.C., requires an objection relating to wrong valuation to be raised at the initial stage itself and the said contention of wrong valuation cannot be raised subsequently. The respondents, represented by Sri M. Chalapati Rao, were aware of all these proceedings and had participated in those proceedings, as such the respondents are precluded from raising the question of wrong valuation at this point of time.

Sri K.G. Krishna Murthy relied upon the judgments of the Hon'ble Supreme Court in **Subhash Mahadevasa Habib v. Nemasa Ambasa Dharmadas (died by LRs) & Ors.**[3]; **Om Prakash Agarwal v. Vishan Dayal Rajpoot & anr**.,[4]; **M.A. Jabbar v. The State of Andhra Pradesh, Industries Department, Hyderabad**[5] and an unreported judgment of the erstwhile High Court of Andhra Pradesh in C.R.P.No.2266 & 2388 of 2016 dated 22.07.2016

17. Sri M.R.S. Srinivas, learned counsel for the plaintiff in other appeals, had contended that the subsequent judgment of the Hon'ble

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[1] 2004 (5) ALT 755
[2] 2018 (5) ALT 425 = 2019 (3) ALD 260
[3] (2007) 13 SCC 650
[4] (2019) 14 SCC 526
[5] (1969) 1 An WR 411

Supreme Court reported in **Videocon International Limited v. Securities and Exchange Board of India,**[6] overrules the earlier larger bench judgment of the erstwhile High Court of Andhra Pradesh in **Vallabhaneni Lakshmana Swamy & anr., v. Valluru Basavaiah & Ors.** (1 supra). Accordingly the appropriate forum for an appeal against the final decree proceedings would continue to be this Court.

18. Sri S. Ashok Anand Kumar, learned counsel appearing for some of the respondents would submit that the subsequent larger Bench judgment in **Ramvilas Bajaj v. Ashok Kumar & anr**.,[7] had held that the forum for appeal available to the litigant at the time when the suit is filed, is protected and there would be no change in the forum for appeal even if the pecuniary jurisdiction changes.

Consideration of the Court:

19. Section 49 of the A.P. Court Fee and Suit Valuation Act, 1956 reads as follows:

> 49. Appeals:- The fee payable in an appeal shall be the same as the fee that would be payable in the court of first instance on the subject matter of the appeal:
> Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the Court of first instance or by the court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against the preliminary decree.
> Explanation 1:- .....
> Explanation 2:- .....
> Explanation 3:- .....

[6] (2015) 4 SCC 33
[7] 2007 (4) ALT 348

> Explanation 4:- Where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the court of first instance on the relief prayed for in the appeal.
> Explanation 5:- ……

20. A perusal of the above provision would make it clear that the valuation and fee payable in an appeal would be the same as in the Court of first instance. The only occasion when there would be a difference in fee is, in situations where Explanation-4 would be applicable. In the present case, the appellants after valuing the appeal, as set out above, had chosen to pay a fixed Court fee of Rs.200/-. Further, the reliefs sought in the appeals relate only to the final decree proceedings before the trial Court. In these circumstances, Explanation-4 to Section 49 would not be applicable and as such, the valuation of the appeal would be Rs.22625/- or even lower, if the final decree is sought to be set aside in relation to only part of the schedule property.

21. It would have to be held that the valuation of the appeals set out in the appeals is incorrect and at best the valuation of the appeals would be on a subject value of Rs.22,625/- only.

22. Sri K.G. Krishna Murthy, learned Senior Counsel had relied upon Section 51 of the A.P. Court Fees and Suits Valuation Act, 1956 to submit that the question of wrong valuation cannot be raised at this stage.

23. Section 51 of the A.P. Court Fees and Suits Valuation Act, 1956, reads as follows:-

> 51. Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes. –
>
> (1) Notwithstanding anything contained in Section 99 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) an objection that, by reason of the overvaluation or under-valuation of a suit or appeal, a Court of first instance or lower appellate Court, which had no jurisdiction with respect to the suit or appeal, exercised jurisdiction with respect thereto shall not be entertained by an appellate Court, unless-
>
> (a) such objection was taken in the Court of first instance at or before the hearing at which issues were first framed or in the lower appellate Court in the memorandum of appeal to that Court, or
>
> (b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued and that the over-valuation or under- valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.
>
> (2) Where such objection was taken in the manner mentioned in clause (a) of subsection (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section, it shall, if it has before it the materials necessary for the determination of the other grounds of appeal to itself, dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court.
>
> (3) Where such objection was taken in that manner and the appellate Court is satisfied as to both those matters, it shall, if those materials are not before it, proceed to deal with the appeal or remand the suit or appeal for disposal in accordance with the directions of the appellate Court.
>
> (4) The provisions of this section with respect to an appellate Court shall, so far as may be, apply to a Court exercising revisional jurisdiction under any law for the time being in force.

24. A reading of Section 51 would show that where a suit is wrongly valued in the trial Court or an appeal is wrongly valued before a lower appellate Court, the said question of wrong valuation cannot be raised before the high in appellate Court, unless it is shown that (a) the question of wrong valuation had been raised earlier before the Court of first instance or the lower appellate Court; and (b) hearing of an appeal

against such orders from the trial Court or lower appellate court would cause prejudice to the objector on the merits of the case.

25. In the present case, which is a first appeal, there is no dispute as to the valuation of suit. The objection presently raised is on the valuation of the present appeal itself. In the circumstances, the provisions of Section 51 of the A.P. Court Fees and Suits Valuation Act, 1956 would not be applicable to the present case, inasmuch as, this is not an appeal filed against a suit, which is wrongly valued, or an appeal before the lower appellate authority, which was wrongly valued. The judgments relied upon by Sri K.G. Krishna Murthy are cases where there was a dispute relating to value in the suit and the same was raised before the appellate forum.

26. This would bring us to the question of where an appeal can be laid against the final decree proceedings dated 12.10.2017. The A.P. Civil Courts Act regulates the provision of appeal given under Section 96 C.P.C. Section 17 of the A.P. Civil Courts Act, 1972 prescribes the forum for appeals against a decree or order in a civil suit in the following manner:-

> 17. Appeals from the decrees and orders of Courts in the Districts. - (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 Senior Civil 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 fifty lakhs,]
>
> (b) to the High Court ; in other cases ; and
>
> (iii) of the Court of Junior Civil Judge, to the District Court.
>
> (2) The District Judge may, subject to the orders of the High Court transfer for disposal any appeal from the

> decree or order of a Court of Junior Civil Judge preferred in the District Court, to any Court of Senior Civil Judge within the district.
> (3) Where a Court of Senior Civil Judge is established in any district at a place remote from the seat of the District Court, the High Court, may, with the previous sanction of the Government, direct that an appeal from the decree or order of any Court of Junior Civil Judge within the local limits of the jurisdiction of such Court of Senior Civil Judge shall be preferred in the said Court of Senior Civil Judge .
>
> Provided that the District Judge may, from time to time, transfer to his own Court, any appeal so preferred, and dispose it of himself.

27. The present limit of Rs.50,00,000/- set out in Section 17 (1) (ii) (a) was originally fixed at Rs15,000/-. The manner, in which the pecuniary jurisdiction has been increased from time to time, is as follows:

Act	Appeal from the decree or Order of		Effective date
Act 19 of 1972	Chief Judge/Additional Chief Judge/D.J. to the High Court (if the value of the subject matter is more than Rs.15,000/-)	Additional Judge, City Civil Court/S.C.J. to C.J./D.J. if the value of the appeal is not more than Rs.15,000/-	01.11.1972
Act 19 of 1984	More than Rs.30,000/-	Not more than Rs.30,000/-	21.05.1984
Act 30 of 1989	More than Rs.1,00,000/-	Not more than Rs.1,00,000/-	02.12.1989
Act 28 of 2000	More than Rs.3,00,000/-	Not more than Rs.3,00,000/-	01.11.2020
Act 16 of 2005	More than Rs.5,00,000/-	Not more than Rs.5,00,000/-	21.04.2005
Act 8 of 2015	More than Rs.10,00,000/-	Not more than Rs.10,00,000	15.04.2015
Act 26 of 2018	More than Rs.50,00,000/-	Not more than Rs.50,00,000/-	19.10.2018

28. As these pecuniary limits were being enhanced from time to time, a question as to whether the appeals filed after the change in pecuniary limits should be filed in the forum prescribed at the time of the filing of the suit or whether the appeal should be filed in the forum which was prescribed by the time the appeal is filed. There was diversity of judicial opinion on this issue resulting in a reference to a larger Bench

judgment of the erstwhile High Court of A.P. After a comprehensive review of all the judgments and law on this issue, a larger Bench of the erstwhile High Court had held as follows:

> 97. Therefore, we reached the following conclusions:
>
> 1. That the Civil Court (Amendment) Act 30 of 1989 is applicable prospectively from 1.12.1989.
>
> 2. Even in case of suits which were filed earlier to the amendment and they are pending disposal as on the date of the amendment came into force, the appeal if any has to be necessarily filed before the Forum created under the amended Act depending on the pecuniary limits. To this limited extent, the decision in *Kotina Papaiah's case* (supra) and *Kameshwaramma's case* (supra) and *Haragopal's case* (supra) stand modified.
>
> 3. Any appeal having been presented before date of amended Act coming into force and the appeals pending as on the said date are required to be disposed of by the Courts, wherever they were pending and the amendment will not have any effect on pending appeals either presented or pending.
>
> 4. The suits or petitions in which decrees were passed prior to 1.12.1989, they will be dealt with in accordance with the pre-amended procedure.
>
> 5. In the cases before us, even after the amendment came into force on 1.12.1989, number of appeals having value less than Rs. one/3 lakhs were admitted by this Court and some of them were disposed of by virtue of the judgment of the Division Bench in *Kameshwaramma's case* (supra) subsequent cases though in fact they do not fall within the category of either pending appeals or appeals presented, before the amendment. The pecuniary limits and forum go together and the amendment being prospective in operation, the appeals ought to have been filed before the amended forum. But, taking into consideration that large number of appeals were already admitted by this Court, and they are pending for a considerable length of time and keeping in view the maxim that "*Actus curiae neminem gravabit*" (An act of the Court shall prejudice no man), we declare that such of the cases which were filed subsequent to amendment are deemed to have been transferred to this Court under Section 24 of Code of Civil Procedure for their disposal in accordance with law.

29. Sri S. Ashok Anand Kumar, now relies upon a subsequent larger Bench judgment of the erstwhile High Court of Andhra Pradesh,

reported in **Ramvilas Bajaj v. Ashok Kumar & anr**. (7 supra), which held in para 41, as follows:

> 41. The principles that emerge from the various aforementioned judgments can be summarized as under:
>
> (i) A landlord has a vested right in common law to recover possession subject to the contract and the relevant statutory provisions. The tenant has a limited protective statutory right which lasts till the protective legislation continues. (*Parripati Chandrashekar Rao's case* (supra), *Ambalal Sarabhai's case* (supra).
>
> (ii) The amendment dealing with the substantive rights of parties is always construed as prospective in operation unless a clear intention either expressly or by necessary implication is manifested in the amending statute unlike the statutes which deal with procedural aspects or statutes which are declaratory in nature. (*Garikapati Veeraiah's case* (supra), *Dayavathi's case* (supra), *K.S. Paripoorna's case* (supra), *Motiram's case* (supra) and *Shamsunder's case* (supra)).
>
> (iii) Right to forum is a vested right and it becomes vested when the proceedings are initiated in the Tribunal or the Court of first instance and unless the legislation has by express words or by necessary implication indicated in clear terms the vested right will continue irrespective of change of jurisdiction of different Tribunals/Courts (*Dhadi Sahu's case* (supra), *R. Sharadamma's case* (supra)).
>
> (iv) Rights of the parties are crystallized on the date of the institution of the suit and subsequent amendment would not affect the pending proceedings unless the amending Act either expressly or by necessary implication gives retrospective effect to the amended provisions (*Atmaram Mittal's case* (supra)).
>
> (v) Where repeal of enactment is not given retrospective operation the pending proceedings would not be affected by the amending Act so as to take away the vested right or "acquired" or "accrued right" under Section 6 of the General Clauses Act. (*Ambalal Sarabhal's case* (supra), *Mohd. Idris's case* (supra) and *Manujendra Dutt's case* (supra)).

30. However, there is a subsequent judgment of the Hon'ble Supreme Court, which has resolved this issue in **Videocon International Limited v. Securities and Exchange Board of India** (6 supra). In this case, an appeal was provided from the Securities Tribunal to the High Court both on questions of fact and law.

Subsequently, there was an amendment which restricted the appeal to only questions of law and also changed the forum of appeal from the High Court to the Hon'ble Supreme Court. After a review of the law on these aspects, the Hon'ble Supreme Court had held that a right of appeal is a vested right and any modification the said right, to the detriment of the appellant, could only be prospective and the right provided to the appellant at the inception of the initial litigation itself would still be available even if the appeal is filed after the amendment. However, when there is an amendment changing the forum of appeal, the same would have to be treated to be retrospective and the forum of appeal available at the time when the appeal is filed would be the appropriate forum and the earlier forum of appeal which was available when the original proceedings were initiated would not be available. The relevant paragraph in the judgment of the Hon'ble Supreme court is as follows:

> 45. Having concluded in the manner expressed in the foregoing paragraphs, it is not necessary for us to examine the main contention, advanced at the hands of the learned counsel for the appellant, namely, that the amendment to Section 15-Z of the SEBI Act, contemplates a mere change of forum of the second appellate remedy. Despite the aforesaid, we consider it just and appropriate, in the facts and circumstances of the present case, to delve on the above subject as well. In dealing with the submission advanced at the hands of the learned counsel for the appellant, on the subject of forum, we will fictionally presume, that the amendment to Section 15-Z by the Securities and Exchange Board of India (Amendment) Act, 2002 had no effect on the second appellate remedy made available to the parties, and further that, the above amendment merely alters the forum of the second appeal, from the High Court (under the unamended provision), to the Supreme Court

(consequent upon the amendment). On the above assumption, the learned counsel for the appellant had placed reliance on the decisions rendered by this Court in *Maria Cristina De Souza Sodder* [*Maria Cristina De Souza Sodder* v. *Amria Zurana Pereira Pinto*, (1979) 1 SCC 92] , *Hitendra Vishnu Thakur* [*Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] and *Thirumalai Chemicals Ltd.* [*Thirumalai Chemicals Ltd.* v. *Union of India*, (2011) 6 SCC 739 : (2011) 3 SCC (Civ) 458] cases to contend, that the law relating to forum being procedural in nature, an amendment which altered the forum, would apply retrospectively. Whilst the correctness of the aforesaid contention cannot be doubted, it is essential to clarify, that the same is not an absolute rule. In this behalf, reference may be made to the judgments relied upon by the learned counsel for the respondent, and more importantly to the judgment rendered in *Dhadi Sahu case* [*CIT* v. *Dhadi Sahu*, 1994 Supp (1) SCC 257] , wherein it has been explained, that an amendment of forum would not necessarily be an issue of procedure. It was concluded in the above judgment, that where the question is of change of forum, it ceased to be a question of procedure, and becomes substantive and vested, if proceedings stand initiated before the earlier prescribed forum (prior to the amendment having taken effect). This Court clearly declared in the above judgment, that if the appellate remedy had been availed of (before the forum expressed in the unamended provision) before the amendment, the same would constitute a vested right. However, if the same has not been availed of, and the forum of the appellate remedy is altered by an amendment, the change in the forum, would constitute a procedural amendment, as contended by the learned counsel for the appellant. Consequently even in the facts and circumstances of the present case, all such appeals as had been filed by the Board, prior to 29-10-2002, would have to be accepted as vested, and must be adjudicated accordingly.

31. In view of the judgment of the Hon'ble Supreme Court cited above, this Court would have no option except to hold that these appeals are not maintainable before this Court and have to be filed before the appropriate District Judge.

32. Hence, these appeals are returned to the appellants to present the same before the appropriate District Judge, who would have jurisdiction, to decide these appeals in accordance with law. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

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C. PRAVEEN KUMAR, J.

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R.RAGHUNANDAN RAO, J.

5th January, 2021

Js.

05-01-2021

CPK,J & RRR,J.

After pronouncement of the Judgment, Sri. Ch. Venkat Raman, sought protection till the Appeals could be presented before the appropriate District Judge.

Sri. K.G. Krishna Murthy, learned Senior Counsel, appearing for the Plaintiff, objected to any protection being granted to the Appellants.

In view of the Order earlier in force in the Appeals, there shall be a direction to maintain status quo for a period of four (4) weeks from today.

The observations made by this court shall not influence the District Court in deciding the case on merits. The Registry shall return the original files to the counsel for the Appellants.

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C.PRAVEEN KUMAR, J.

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R. RAGHUNANDAN RAO, J.

Date: 05.01.2021
SM.

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

And

THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO

A.S.No.1361 of 2017
And
A.S.Nos.302 & 379/2018

5th January, 2021

js