

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

C.M.A. No.1040 of 2011

Between:

Margadarsi Chit Fund Private Limited, Hyderabad

.... Petitioner

And

1. Posam Subramanyam Reddy and Four others.

....Respondents.

Date of Order pronounced on : 15.03.2023

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

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

VENKATA JYOTHIRMAI PRATAPA, J

***HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

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! Counsel for the Petitioner : Sri P. Durga Prasad,

Counsel for the Respondents: Sri K. Suresh Kumar Reddy.

<Gist :

>Head Note:

? Cases referred:

- 1) (2017) 2 ALD 360 (DB)
- 2) (1971) 3 SCR 314
- 3) (2005) 7 SCC 791.
- 4) Halsbury's Laws of England, (4th Edition), Reissue,
Vol.10, Para 317,
- 5) AIR 1999 HP 104
- 6) AIR 1978 Kerala 209.
- 7) AIR 2002 Kant. 252.
- 8) 2022 SCC Online Del 633

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

C.M.A.No.1040 of 2011

JUDGMENT:-

This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of the Code of Civil Procedure, 1908 (for short "C.P.C.") impugning the Order dated 09.08.2011 in O.S.No.603 of 2009 on the file of the learned Principal Senior Civil Judge, Tirupati, wherein the plaint is returned to present before the proper Court within seven (7) days from the date of the order holding that the Court has no jurisdiction to entertain the suit.

Reference of parties in the appeal:

1. The Appellant herein was the Plaintiff and the Respondent Nos., 1 to 5 herein were the Defendant Nos., 1 to 5 before the trial Court. For the sake of convenience and understanding, the parties are referred to as they were arrayed before the learned trial Court.

Case of the Plaintiff:

2. The case of the plaintiff in brief is that the Defendant No.1, is a member of the chit of the Plaintiff's company, being highest bidder availed an amount of Rs.40,00,000/- agreeing to forego an amount of Rs.14,00,000/- out of the chit value. As on the date of the payment of prize amount, the Defendant No.1 paid Rs.8,00,000/-. He furnished Defendant Nos.,2 to 5 as guarantors for the future liability of Rs.32,00,000/- and executed an Agreement of Guarantee on 24.05.2007. All the defendants executed promissory notes as a collateral security. Defendant No.1 created mortgage by way of deposit of title deeds relating to the schedule property in favour of the plaintiff's company as a security. Having paid 31 installments, the Defendant No.1 committed default in payment of the remaining installments. Hence, for recovery of the amount, a suit has been filed seeking a preliminary decree against the mortgaged property of the Defendant No.1 and for a personal decree against all the defendants.

Version of the Defendant Nos. 1 to 5:

3. The Defendant Nos., 1 to 3 and 5 were set ex parte as they did not choose to contest the matter. The Defendant No.4 filed Written Statement denying the suit transaction. He also stated that he never executed Agreement of Guarantee in favour of the plaintiff's company relating to the suit debt, that the suit property is not properly valued and the suit is barred by limitation.

Finding of the trial Court:

4. During the trial, on behalf of the plaintiff, P.Ws. 1 to 3 were examined and Ex.A-1 to Ex.A-17 were marked. The 4th Defendant was examined as D.W.1.

4.1. At this juncture, the learned counsel for Defendant No.4 raised an issue that the Court has no jurisdiction to entertain the suit since the Defendant No.1 joined as a member of the chit company at Eluru on 06.01.2007 and the Clause 14 of the Agreement of Guarantee/Ex.A-4 shows that any dispute arising out of the guarantee bond shall be subjected to the

jurisdiction of the Court at Eluru only. Furthermore, PW.1 admitted about Clause 14 of Ex.A.4 in his cross examination.

4.2. The learned trial Judge framed a preliminary issue on the point as to whether the Court has jurisdiction to entertain the suit. While answering the same, the learned trial Judge was convinced with the argument of the learned counsel for the Defendant No.4 and accordingly, returned the plaint for presentation before the proper Court within 7 days.

4.3. After the said return, the learned counsel for the Plaintiff represented the plaint stating that the suit is based on mortgage and the suit property is situated within the jurisdiction of the Court and all the Defendants are also residing within the jurisdiction of the said Court, hence the conferment of the jurisdiction in the Chit Agreement of Guarantee will not override the general law i.e., the Code of Civil Procedure. The learned trial Judge returned the said representation reiterating the stand taken in the order impugned stating that the Order dated 09.08.2011 holds good and the plaintiff is at liberty to file revision against the said Order.

Grounds of appeal:

5. Feeling aggrieved and dissatisfied with the impugned order, the plaintiff carried the matter in this appeal on the following grounds:

- i) The impugned Order is in variance to the very spirit and object of the provisions of Section 16 (c) of the CPC.
- ii) The suit is based on a mortgage and the property is situated within the jurisdiction of the Court and furthermore, all the defendants are residing within the jurisdiction of the trial Court.
- iii) The trial Court has every jurisdiction to entertain the suit based on mortgage.
- iv) The agreement between the parties shall always be subject to a statute.
- v) The reasons assigned by the trial Court are neither sustainable nor tenable in the eye of law.

6. Heard both the counsel. Perused the material available on record.

Point/s for Determination:

7. Questions emerging for determination in this appeal are:

- i) Whether the trial Court at Tirupati has got jurisdiction to entertain a mortgage suit despite when the

parties conferred jurisdiction to the Court at Eluru, vide Agreement of Guarantee?

ii) Whether the impugned order is sustainable under law or does it warrant interference of this Court in the appeal?

Arguments advanced at the bar:

8. Contentions of the Appellant/Plaintiff:

8.1. Learned counsel for the appellant in elaboration to what was stated in the Grounds of Appeal, would primarily submit that the suit is filed for sale of mortgage property. Second, undoubtedly the chit transaction took place at Eluru, the Guarantee Agreement also discloses that in case of any dispute, the Court at Eluru only has got jurisdiction, however that cannot preclude the court from exercising jurisdiction at Tirupati. Third, the agreement between the parties cannot be override the general law i.e., Section 16 (c) of CPC and the parties cannot confer jurisdiction on Courts which do not have such jurisdiction.

8.2. Reliance was placed on the decision of the Hon'ble Division Bench of the High Court of Andhra Pradesh in **M/s Sushee Ventures Private Limited v Rahul Agarwal and**

others¹, wherein a petition u/s. 9 of the Arbitration and Conciliation Act, 1996 was filed in District Court at Rangareddy. In its factual matrix, the subject matter of the petition was situated in Medak District and the Development agreement-cum-GPA was executed in Hyderabad. While negating the contention that the parties are at liberty and convenience in conferring exclusive jurisdiction upon such a Court, the Division Bench held that if the Court does not have jurisdiction inherently to deal with the matter, the parties cannot confer jurisdiction upon it by agreement. At paragraph No.23, the Hon'ble Division Bench has held as under;

"...Convenience of the parties cannot be determinative of the jurisdiction of a Court. If such an argument is accepted, it would be open to a litigant to confer exclusive jurisdiction upon a Court without reference or regard to territorial and pecuniary jurisdiction also."

9. Contention of the Respondent/D-4

9.1. Refuting the above arguments, the learned counsel for the respondent submitted that as per Section 20 of the C.P.C., Eluru Court has alone got jurisdiction. Second, once when the parties

¹ (2017) 2 ALD 360 (DB)

agreed to have exclusive jurisdiction of Eluru Court in case of any dispute, they cannot contend that the Court at Tirupati has got jurisdiction.

Legal Analysis and Findings:

10. In the light of rival contentions and arguments advanced, it apt to refer the legal position and judicial precedents on the point under consideration. Sections 15 to 25 of the C.P.C. deal with the aspect of place of suing in respect of suits. Section 16 embodies the principle of territorial jurisdiction in respect to the suits in the nature of clauses (a) to (f), by conferring the jurisdiction to the court within whose local limits, the property is situate. In specific to the context, Section 16(c) refers to the suits for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property. For the sake of quick reference, it is appurtenant to extract Section 16 (c) of C.P.C., which reads as follows;

"Section 16. Suits to be instituted where subject-matter situate-

Subject to the pecuniary or other limitations prescribed by any law, suits—

(c) for foreclosure, sale, or redemption in the case of a mortgage of or charge upon immovable property,

...shall be instituted in the Court **within the local limits of whose jurisdiction the property is situate:**

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.”

Explanation.—In this section “property” means property situate in India.

11. Furthermore, Section 20 of the C.P.C. provides that other suits shall be instituted where the defendants reside or the cause of action arises. The opening words “subject to the limitations aforesaid” as used in the Section 20 indicate the legislative intent of covering those cases that do not fall expressly under Sections 15 to 19 of the C.P.C. While so, the commencing words in Section 16 “Subject to the pecuniary or other limitations prescribed by any law, suits” would indicate

that once a suit is governed by Section 16 (c), as in the context of the present case, it has an overriding effect over Section 20.

12.Coming to the precedential law, the Hon'ble Apex Court and the Hon'ble High Courts have time and again reiterated the law relating to "Choice of Court by Contracts" or "Exclusive Jurisdiction Clauses." In **Hakam Singh v. Gammon (India) Ltd.**,² wherein the contract for construction work was deemed to have been entered in Bombay and by virtue of one of its clauses, Bombay courts were alone to adjudicate upon disputes, a question arose before the Hon'ble Supreme Court as to whether Bombay court "alone" had jurisdiction. While juxtaposing the provisions of the C.P.C and the Indian Contract Act, 1872, the Apex Court held that it is not left to the discretion of the parties to confer jurisdiction by their agreement on a court that does not possess the same under the C.P.C. whereas, in a situation where the C.P.C. itself confers jurisdiction to two or more courts, the parties are free to agree within those joints by their agreement and such agreements would not contravene the Section 28 of the Indian Contract Act, 1872.

² (1971) 3 SCR 314.

13. The principle laid down in **Hakam Singh** (supra) has been reiterated time and again and in **Harshad Chiman Lal Modi v. DLF Universal Ltd. And Another**,³ the Hon'ble Apex Court had an occasion to deal with a suit for specific performance seeking execution and delivery i.e., a case falling under Section 16(d). Citing Halsbury's Laws of England,⁴ the Hon'ble Apex Court observed at para 31 as follows;

"317. Consent and Waiver- Where, by reason of any limitation imposed by statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the jurisdiction has not been performed or fulfilled. Where the court has jurisdiction over the particular subject matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent."

³ (2005) 7 SCC 791

⁴ Halsbury's Laws of England, (4th Edition), Reissue, Vol.10, Para 317

The Hon'ble Apex Court held that Section 20 being a residuary provision cannot override a case that squarely fits in the category of Section 16. While interpreting the proviso attached to Section 16, the Hon'ble Apex Court observed that it could come into operation only when the relief sought could be obtained entirely by the personal obedience of the defendant.

14. The Hon'ble High Courts have also interpreted the legal position on this subject at various instances. To cite a few;

14.1. The Hon'ble High Court of Himachal Pradesh in **Central Bank of India v Eleena Fasteners (P) Limited and others**⁵ was posed with a similar situation. A suit under Order 34 of C.P.C. was filed by the plaintiff bank before the High Court on its original side. Cash credit facility was availed by creating equitable mortgage in respect of immovable property situate at Jagadari at Haryana. An objection was raised in the light of Section 16(c) of the C.P.C. The High Court while accepting the said objection held that in view of explicit and mandatory provisions, a suit for foreclosure or sale of such

⁵ AIR 1999 HP 104

mortgage property could be instituted only before court at Jagadari at Haryana.

14.2. The Hon'ble High Court of Kerala in **Mrs. Rosy Joseph v. Union Bank of India**,⁶ also dealt with a similar question. The Bank filed a suit for recovery of money by the sale of immovable property based on a mortgage by deposit of title deeds. The properties mortgaged were situated at Cochin, whereas the suit was filed at Ernakulam. In that view of the matter, the Court held that once a suit is directly governed by Section 16 (c) of C.P.C., the provisions contained in Section 20 of C.P.C. cannot be called for aid and it is not permissible to institute the suit in any Court other than the one within the local limits of whose jurisdiction the mortgaged properties are situated.

14.3. The Hon'ble High Court of Karnataka in **Shree Shanthi Homes Pvt. Ltd. v CREF Finance Ltd., Calcutta**⁷ was posed with a like question. The suit for foreclosure was filed at Bangalore as the mortgaged properties are situated at Bangalore. The Memorandum of Understanding between the

⁶ AIR 1978 Kerala 209

⁷ AIR 2002 Kant. 252

parties conferred jurisdiction before the Court at Bombay. In that view of the matter the High Court of Karnataka opined that Section 16 of C.P.C. has overriding effect on Section 20. The Hon'ble Court also observed that in case any relief is granted to the plaintiff, it has to be eked out from the properties situated at Bangalore.

14.4. The Hon'ble Delhi High Court in **Aanchal Mittal and others v Ankur Shukla**⁸ held that when a court lacks inherent jurisdiction, parties cannot by their agreement confer the same.

15. In the backdrop of the legal position and authorities referred to supra, the argument of the learned counsel for the respondent falls to ground. The learned trial Judge lost sight of Section 16 (c) of the C.P.C, which clearly indicates that the suit relating to foreclosure, sale, redemption etc., connecting to the mortgage of immovable property, the Court within the jurisdiction of which the property is situated only got jurisdiction.

⁸2022 SCC OnLine Del 633

16. The learned trial Judge erred in concluding that the Court has no jurisdiction under the impression that the parties conferred jurisdiction only to Eluru Court. The suit being a mortgage suit, in view of the express and clear provision of Section 16 (c), must be entertained before the Court in whose jurisdiction the property is situated. Section 16 (c) has an overriding effect on the residuary provision as contained in Section 20. Coming to the facts of the present case, no doubt the chit transaction took place at Eluru and Clause No.15 of the Agreement of the Guarantee discloses that in case of any dispute, the Court at Eluru only has got jurisdiction, but the fact remains that the suit property is situated within the jurisdiction of the Court at Tirupati.

17. Convenience and liberty of the parties cannot be stretched to an extent of conferring jurisdiction to a court that inherently lacks jurisdiction to adjudicate upon a matter. Any agreement entered between the parties should confirm with the scheme of jurisdiction as envisaged under the C.P.C. and the choice is ought to be made, if available, within the joints as

may be permissible by the Code. Any deviance to this settled legal position would hit such agreements, for being violative of Sections 23 and 28 of the Indian Contract Act, 1872 besides being contrary to the scheme of jurisdiction under C.P.C.

18. In the light of the aforementioned premises, this Court is of the view that the Order impugned brooks interference in appeal.

19. Accordingly, the Civil Miscellaneous Appeal is allowed with costs.

19.1. Having regard to the fact that the suit was instituted in 2009, it is necessary that it should be given an expeditious disposal. The learned Principal Senior Civil Judge, Tirupati is directed to take the suit on file forthwith and dispose of the suit within a period of three (03) months from the date of receipt of a copy of this Order.

19.2. In case, if the plaint is returned to the plaintiff, the plaintiff is at liberty to submit the plaint within a period of one

(01) week from the date of receipt of a copy of this Order
before the learned Principal Senior Civil Judge, Tirupati.

Miscellaneous petitions pending, if any, shall stand closed.

VENKATA JYOTHIRMAI PRATAPA, J

Date : 15.03.2023

Note: LR copy be marked.
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HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

C.M.A.No.1040 of 2011

Date : 15.03.2023

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