

HIGH COURT FOR THE STATE OF TELANGANA

CITY CIVIL COURT APPEAL No.120 OF 2022

Between:

Mr. Bhojraj Srinivas, s/o. B.Nageshwar Rao,
Aged about 40 years, r/o. Plot No.140,
Durga Vihar Colony, Gunrock Avenue,
Trimulgherry, Secunderabad.

.... Appellant/respondent/
Plaintiff

And

Bhojraj Divya w/o. Bhojraj Srinivas,
Aged about 35 years, r/o.Plot No.40,
Balaji Enclave, Gunrock, Transport road,
Secunderabad.

.... Respondent/petitioner/
Defendant

DATE OF JUDGMENT PRONOUNCED : 03.04.2023

**HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

1. Whether Reporters of Local Newspapers : **Yes**
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

*** HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA
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.... Respondent/petitioner/
Defendant

!Counsel for the appellant : Sri M.Naga Deepak

Counsel for the Respondent : Sri T.S.Praveen Kumar

<Gist :

>Head Note:

?Cases referred:

MANU/UP/0035/1992
MANU/AP/1253/2014
(1973) 1 SCC 115
(1964) 3 SCR 214 : AIR 1964 SC 1348
1929 SCC Online All 47

HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
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CITY CIVIL COURT APPEAL No.120 OF 2022

JUDGMENT: *(Per Hon'ble Sri Justice P.Naveen Rao)*

Heard learned counsel Sri M.Naga Deepak for the appellant and the learned counsel Sri T.S.Praveen Kumar for the respondent.

2. Plaintiff filed O.S.No.7 of 2022 in the Court of I Additional chief Judge, City Civil Court at Secunderabad. Plaintiff claims to be a Dentist by profession. He married the defendant in the year 2007. According to the plaintiff, property bearing plot No.140 in Sy.Nos.74, 1001/1, 100/2, 100/3, 102 and 103 admeasuring 251.11 square yards situated at Durgamatha House Building Co-operative Society Limited at Gunrock, Trimulgherry village, Secunderabad Cantonment, described as schedule 'A' property, was purchased by the defendant vide Sale Deed dated 02.09.2015. Defendant paid total sale consideration of 37,66,650/-. In pursuance of the collective decision to build a house, plaintiff applied to Secunderabad Cantonment Board for permission to construct a house. The Cantonment Board has granted building

permission on 20.11.2017. He paid the amount required for building permission and entire costs for construction of the building. In all, he has contributed 1,71,97,484/- for construction of building on suit schedule 'A' property. Plaintiff is living in the said property. It is further case that plaintiff and defendant decided to invest in a commercial property. Consequent to the said decision, they have identified the office space bearing no.918, having Municipal No.6-3-1192/1/III/918 in Block-III, admeasuring 1340.41 square feet including two Car parkings and jointly purchased for a total sale consideration of 1,04,95,700-. It is schedule 'B' property.

3. According to the plaintiff, even though there were joint purchases made by the plaintiff and defendant, without informing the plaintiff, the defendant registered the said properties in her name. According to the plaintiff, in the year 2021, defendant suddenly left the house along with two children and has not responded for a long time. According to the plaintiff, defendant started claiming right over the schedule 'A' and 'B' properties and threatening the plaintiff to vacate the schedule 'A' property. In those circumstances, plaintiff prayed to pass decree in his favour

declaring that plaintiff is a beneficial owner of the schedule 'A' property and consequently declare that the plaintiff is the true and rightful owner of 70% of the share of the schedule 'A' property; and to declare that he is a beneficial owner of schedule 'B' property and consequently declare that the plaintiff is true and rightful owner of 52% of the share in the schedule 'B' property.

4. In the said suit, defendant filed I.A.No.1093 of 2022 under Order VII Rule 11(D) read with Section 151 of Code of Civil Procedure, 1908 (CPC) praying to reject the plaint on the ground of jurisdiction. According to the petitioner/defendant, dispute raised in the suit is a family dispute and there are Family Courts specially constituted under the Family Courts Act, 1984 (for short, 'Act, 1984') and the suit has to be instituted only in the Family Court, not before the regular Civil Court. In support of the said plea, reliance is placed on Sections 7 and 8 of the Act, 1984.

5. Respondent/Plaintiff opposed the said prayer by contending that suit is maintainable before the Civil Court. Alternative submission made was even assuming that dispute raised in the suit is a family dispute and that the Family Court alone has

jurisdiction to deal with the dispute raised by the plaintiff, the plaint can be returned with liberty to the plaintiff to represent the suit before the Family Court.

6. Holding that in the matters between the plaintiff and defendant, Section 7 of the Act, 1984 vests jurisdiction in the Family Court and as per Section 8 of the Act, 1984, the jurisdiction of the Civil Court is excluded, the suit filed by the plaintiff is barred by law and accordingly, rejected the plaint.

7. We have heard learned senior learned counsel for the plaintiff and the learned counsel for the respondent.

8. According to the learned senior counsel for plaintiff, suit before the Civil Court was maintainable as plaintiff was only pleading that he is a joint owner of the suit schedule 'A' and 'B' properties as he and defendant together invested in the said properties, whereas by playing fraud, defendant got those two properties registered on her name and as co-owner, petitioner is only claiming his share in the suit schedule 'A' and 'B' properties. Therefore, according to the learned counsel, the suit is maintainable before the Civil Court.

9. Learned counsel also made alternative plea that even assuming that Sections 7 and 8 of the Act, 1984 are attracted and the suit is not maintainable before the Civil Court, the Civil Court grossly erred in rejecting the plaint instead of returning the plaint with liberty to the plaintiff to present the plaint before the Family Court. On account of rejection of plaint, grave prejudice is caused to the plaintiff. If plaintiff presented the suit before the Family Court, there is every likelihood of defendant raising a plea of maintainability of the suit on the ground of limitation and in such an event, grave prejudice would be caused to the plaintiff in asserting his right over the suit schedule properties.

10. Learned counsel for the plaintiff relied on following decisions:

i) **Governing Council of Kayastha Pathshala, Prayag and others vs. Ram Chandra Srivastava and others¹**;

ii) **Judgment of High Court of Bombay in Chandra Prem Shah and others vs. K.Raheja Universal Pvt.Ltd., and another (Appeal from Order No.415 of 2014 with Civil Application No.469 of 2014 in Appeal from Order No.415 of 2014).**

11. *Per contra*, according to the learned counsel for defendant, even before the suit was instituted, the Family Court was established in Hyderabad and in view of the provisions of the Act,

¹ MANU/UP/0035/1992

1984, suit which concerns dispute on property between the husband and wife has to be instituted only in the Family Court. Knowing fully well the statutory mandate, the plaintiff instituted the suit before the wrong Court and as suit is not maintainable in law before the Civil Court, the trial Court rightly rejected the plaint. According to the learned counsel, the trial Court has not committed any illegality or irregularity in rejecting the plaint. As by the time the suit was instituted the Civil Court has no jurisdiction, question of returning the plaint to enable the plaintiff to present the suit before the Family Court does not arise.

12. Learned counsel for the defendant placed reliance on the following decisions:

i) **Creations A Partnership Firm vs. Twenty Four Assured Aircon Pvt.Ltd.**²; and

ii) **Amar Chand Inani vs. The Union of India (UOI)**³

13. The following issue arises for consideration:

(1) Whether the trial Court committed error in rejecting the plaint ?

(2) To what relief ?

² MANU/AP/1253/2014

³ (1973) 1 SCC 115

ISSUE NO.1:

14. To appreciate the respective submissions, it is necessary to look into the provisions in Sections 7⁴ and 8⁵ of the Act 1984.

15. Sub-section (1)(a) to Section 7 of the Act, 1984 mandates that Family Court shall exercise jurisdiction either to exercisable by any District Court or any Sub-ordinate Civil Court under any

⁴ **S.7. Jurisdiction.—***(1) Subject to the other provisions of this Act, a Family Court shall—*
(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and (b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.—The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:— (a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage; (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them; (d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship; (e) a suit or proceeding for a declaration as to the legitimacy of any person; (f) a suit or proceeding for maintenance; (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise— (a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and (b) such other jurisdiction as may be conferred on it by any other enactment.

⁵ **S.8. Exclusion of jurisdiction and pending proceedings.—***Where a Family Court has been established for any area,— (a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section; (b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974); (c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), — (i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and (ii) which would have been required to be instituted or taken before such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established.*

law in respect of the suits or proceedings of the nature referred to in the explanation. Insofar as this case is concerned, clause (c) of explanation appended to Section 7(1)(b) is relevant. According to this clause, with respect to dispute between the parties to a marriage concerning the properties of the parties or either of them jurisdiction vests in the Family court. Section 8 of the Act, 1984 deals with exclusion of jurisdiction of other Courts and how to deal with pending proceedings. According to clause (a), no District Court or any Subordinate Civil Court shall have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to sub-section (b) of Section 7(1). According to clause (c) suits filed in the Civil Court before constituting of the Family Court shall stand transferred to the Family Court.

16. A cumulative reading of these two provisions make it clear that from the date of constitution of the Family Court covering an area, any dispute between husband and wife concerning property owned by them or by any one of them, the Family Court alone shall have jurisdiction to decide and District Court or Subordinate civil Court cannot entertain such suits/decide pending suits.

17. Having regard to the statutory mandate, looking at the pleadings in the plaint and the prayer sought, it is clear that according to the plaintiff, the suit schedules 'A' and 'B' properties are joint properties of plaintiff and defendant and the plaintiff is entitled to his share in those two properties, whereas defendant is claiming those two properties as belonging to her exclusively. Thus, there is a dispute between plaintiff and defendant on suit schedule 'A' and 'B' properties. In accordance with the explanation (c) appended to Section 7(1)(b), the Family Court alone has jurisdiction to entertain the suit and adjudicate the dispute and the District Court in Hyderabad District was ousted of the jurisdiction to entertain the suit filed by the plaintiff. There is no ambiguity in the statutory provisions requiring interpretation in any other manner. Therefore, the plaintiff erred in instituting the suit before the Civil Court when Family Court was already established in Hyderabad district.

18. The next question that arises for consideration is whether the trial Court erred in rejecting the plaint in stead of returning the plaint to enable the plaintiff to present the suit before the Family Court.

19. Order VII⁶ Rules 10⁷ and 11⁸ of CPC require consideration.

20. Order VII Rule 10(1) envisages return of plaint at any stage of the suit to be presented to the Court in which suit should have been instituted. Order VII Rule 11(d) of CPC envisages rejection of plaint when the suit appears from the statement in the plaint to be barred by any law.

21. In **Raizada Topandas and another vs. Gorakhram Gokalchand**⁹, the issue arose under Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The issue considered by the Hon'ble Supreme Court was on whether based on counter

⁶ **Order VII. Plaint.**

⁷ **Rule 10. Return of plaint.**—(1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

[Explanation.— For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.]

(2) **Procedure on returning plaint.** —On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

⁸ **Rule 11. Rejection of plaint.**— The plaint shall be rejected in the following cases:—**(a)** where it does not disclose a cause of action; **(b)** where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so; **(c)** where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; **(d)** where the suit appears from the statement in the plaint to be barred by any law; **(e)** where it is not filed in duplicate; **(f)** where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

⁹ (1964) 3 SCR 214 : AIR 1964 SC 1348

pleadings of defendant the jurisdiction of a Court has to be decided. It is useful to extract the question posed for consideration and the decision. It reads as under:

“6. What is the true effect of sub-section (1) of Section 28 with regard to the aforesaid two matters? Does it mean that if the defendant raises a claim or question as to the existence of a relationship of landlord and tenant between him and the plaintiff, the jurisdiction of the City civil court is ousted even though the plaintiff pleads that there is no such relationship, and the only court which has exclusive jurisdiction to try the suit, is the Court of Small Causes, Bombay? That is the question before us.

xx

Having regard to the general principle stated above, we think that the view taken by the High Court in this case is correct. Section 28 no doubt gives exclusive jurisdiction to the Court of Small Causes to entertain and try a suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises to which any of the provisions of Part II apply; it also gives exclusive jurisdiction to decide any application under the Act and any claim or question arising out of the Act or any of its provisions — all this notwithstanding anything contained in any other law. The argument of learned counsel for the appellants is that the section in effect states that notwithstanding any general principle, all claims or questions under the Act shall be tried exclusively by the courts mentioned in the section e.g. the Court of Small Causes in Greater Bombay, and it does not matter whether the claim or question is raised by the plaintiff or the defendant. The argument is plausible, but appears to us to be untenable on a careful scrutiny. We do not think that the section says or intends to say that the plea of the defendant will determine or change the forum. It proceeds on the basis that exclusive jurisdiction is conferred on certain courts to decide all questions or claims under the Act as to parties, between whom there is or was a relationship of landlord and tenant. It does not invest those courts with exclusive power to try questions of title, such as questions as between the rightful owner and a trespasser or licensee, for such questions do not arise under the Act. If, therefore, the plaintiff in his plaint does not admit a relation which would

attract any of the provisions of the Act on which the exclusive jurisdiction given under Section 28 depends, we do not think that the defendant by his plea can force the plaintiff to go to a forum where on his averments he cannot go. The interpretation canvassed for by the appellants will give rise to anomalous results; for example, the defendant may in every case force the plaintiff to go to the Court of Small Causes and secondly, if the Court of Small Causes finds against the defendant's plea, the plaint may have to be returned for presentation to the proper court for a second time. Learned counsel for the appellants has argued in the alternative that the Court of Small Causes need not return the plaint a second time, for his contention is that that court has "exclusive" jurisdiction to decide the case whenever a claim is made under the Act even though the claim is found to be false on trial. We do not think that this contention can be accepted as correct, for to do so would be to hold that the Court of Small Causes has exclusive jurisdiction to decide questions of title, which is clearly negated by Section 29-A. Anomalous results may not be a conclusive argument, but when one has regard to the provisions in Part II it seems reasonably clear that the exclusive jurisdiction conferred by Section 28 is really dependent on an existing or previous relationship of landlord and tenant and on claims arising under the Act as between such parties."

22. It is thus apparent that the issue considered by the Hon'ble Supreme Court is not on the same point on which the decision is made by trial Court in this case. On the contrary, Hon'ble Supreme Court upheld the larger Bench decision of Allahabad High Court in **Ananti v. Channu and others**¹⁰, which concerns the issue on hand.

23. In **Ananti** (supra), Larger Bench of the Allahabad High Court held as under:

¹⁰ 1929 SCC Online All 47

“The plaintiff chooses his forum and files his suit. If he establishes the correctness of his facts he will get his relief from the forum chosen. If ... he frames his suit in a manner not warranted by the facts, and goes for his relief to a court which cannot grant him relief on the true facts, he will have his suit dismissed. Then there will be no question of returning the plaint for presentation to the proper court, for the plaint, as framed, would not justify the other kind of court to grant him the relief ... If it is found, on a trial on the merits so far as this issue of jurisdiction goes, that the facts alleged by the plaintiff are not true and the facts alleged by the defendants are true, and that the case is not cognisable by the court, there will be two kinds of orders to be passed. If the jurisdiction is only one relating to territorial limits or pecuniary limits, the plaint will be ordered to be returned for presentation to the proper court. If, on the other hand, it is found that, having regard to the *nature* of the suit, it is not cognizable by the class of court to which the court belongs, the plaintiff's suit will have to be dismissed in its entirety.”

(emphasis supplied)

24. In **Anwar Chand Inani** (supra), the main question considered by Hon'ble Supreme Court was whether the suit was filed within time. The facts are noted in paragraphs 4 and 5 of the judgment. They read as under:

“4. There is no dispute that the Article applicable to the suit is Article 22 of the Indian Limitation Act, 1908, hereinafter called the “Act” which provided a period of one year for a suit for compensation for injury to the person from the date when the injury was committed. The injury here was committed on January 1, 1958. But the plaintiff had to issue a notice under Section 80 of the Civil Procedure Code before filing the suit. The plaintiff issued

the notice and it was served on the General Manager of the Railway in question on December 29, 1958. The Suit was filed in the Court of the Senior Subordinate Judge of Karnal, hereinafter called the "Karnal Court", on March 2, 1959 as March 1, 1959 was a day on which the Court was not open. For ministerial purposes, the suit was subsequently transferred to the Court of the Subordinate Judge, Panipat, hereinafter referred to as the "Panipat Court", which by its order, dated October 28, 1959, returned the plaint for presentation to the proper court. That was on the basis of its finding that Mohri Railway Station, where the injury was committed, was not situate within territorial jurisdiction of the Court. The plain was thereafter presented in the Court of the Senior Subordinate Judge, Ambala, hereinafter referred to as the "trial court", on October 29, 1959, together with an application under Section 14 of the Act.

5. Before the trial court as well as the High Court the appellant contended that, by virtue of Section 4 of the suit filed, the Act, on March 2, 1959, was within time, as March 1, 1959, was a day on which the Court was not open and that in any event, the suit was not barred by limitation as the appellant could not have filed the suit before the expiration of two months after the delivery of the notice under Section 80 of the Civil Procedure Code. Both the Courts overruled these contentions."

25. The Hon'ble Supreme Court held,

"9. If the plaintiff had filed the suit in the trial court, on March 2, 1950, then certainly the suit would have been within time under Section 4, as that was the proper Court in which the suit should have been filed. As the Karnal Court had no jurisdiction to entertain the plaint, it was not the proper Court. The fact that the plaintiff would be entitled to take advantage of the Provisions of Section 14 of the Act would not, in any way, affect the question whether the suit was filed within the time as provided in Section 4 in the Karnal Court. Section 14 of the Act only provided for the exclusion of the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it. Even if the plaintiff was entitled to get an exclusion of the time during which he was prosecuting the suit in the Karnal and Panipat Courts, the suit would not be within time as the filing of the suit in the Karnal Court was beyond the period of Limitation. It was,

however, argued by Counsel for the appellant that the suit instituted in the trial court by the presentation of the plaint after it was returned for presentation to the proper Court was a continuation of the suit filed in the Karnal Court and, therefore, the suit filed in Karnal Court must be deemed to have been filed in the trial court; We think there is no substance in the argument, for, when the plaint was returned for presentation to the proper Court and was presented in that Court, the suit can be deemed to be instituted in the proper Court only when the plaint was presented in that Court. In other words, the suit instituted in the trial court by the presentation of the plaint returned by the Panipat Court was not a continuation of the suit filed in the Karnal Court (see the decisions in *Harachand Succaram Gandhi v. G.I.P. Rly. Co.* [AIR 1928 Bom 421] *Bimla Prasad Mukerji v. Lal Moni Devi* [AIR 1926 Cal 355] and *Ram Kishun v. Ashirbad.* [ILR 29 Pat 699] Therefore, the presentation of the plaint in the Karnal Court on March 2, 1959, cannot be deemed to be a presentation of it on that day in the trial court.”

26. By the time the suit was filed by the plaintiff, the District Courts in Hyderabad District did not have the jurisdiction to entertain the dispute concerning the suit schedules ‘A’ and ‘B’ properties claimed to have been belonging to both the parties and only Family Court has jurisdiction. It is a case of inherent lack of jurisdiction for the District Court to entertain the suit. In such a case, the Court, which does not have jurisdiction to entertain the suit, cannot return the plaint granting liberty to the plaintiff to represent the suit before the Family Court, but has to dismiss the suit for want of jurisdiction.

27. Having regard to the mandate of law, we do not see any error committed by the trial Court in rejecting the plaint, allowing the application filed under Order VII Rule 11(D) of CPC. The Appeal fails. It is accordingly dismissed. Pending miscellaneous applications if any shall stand closed.

P.NAVEEN RAO, J

NAGESH BHEEMAPAKA, J

Date: 03.04.2023

Note: L.R.Copy to be marked: Yes

(b/o.)

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HON'BLE SRI JUSTICE P. NAVEEN RAO
&
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

CITY CIVIL COURT APPEAL NO.120 of 2022

Date : 03.04.2023

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