

A THE DISTRICT COLLECTOR, SRIKAKULAM & ORS.
v.
BAGATHI KRISHNA RAO & ANR.
(Civil Appeal No.2754 of 2007)

JUNE 2, 2010

B [DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

Code of civil procedure, 1908:

C s.100 r/w s.79, O.27 r.1, O.1, r.9, proviso and Article 300
of Constitution of India – Second appeal filed by District
Collector and District Forest Officer – State not impleaded as
a party – HELD: State of Andhra Pradesh was a party before
the trial court as well as before the first appellate court – The
D relief sought by the plaintiff was declaration of title of suit land
which according to appellants was in favour of State of Andhra
Pradesh and the suit land in physical possession of Forest
Department – Thus, keeping in view the provisions of s.79,
r.1 of O.27, proviso to r.9 of O.1 of the Code and Article 300
E of the Constitution, prima facie the State was a necessary
party – Second appeal filed by the officials was not
maintainable – High Court decided the second appeal without
considering this important aspect of the matter – Judgment
of High Court set aside – Case remanded to High Court to
F decide the second appeal afresh – Appellants permitted to
file an application for impleadment of State of Andhra
Pradesh as appellant, which would be considered by High
Court in accordance with law – Constitution of India, 1950 –
Article 300 – Party.

G *The State of Punjab Vs. The Okara Grain Buyers
Syndicate Ltd., Okara & Anr. (1964) SCR 387 =AIR 1964 SC
669; Ranjeet Mal Vs. General Manager, Northern Railway,
New Delhi & Anr., (1977) 2 SCR 409 =AIR 1977 SC 1701;
Kali Prasad Agarwala (Dead by L.Rs.) & Ors. v. M/s. Bharat*

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Coking Coal Limited & Ors. (1989) 2 SCR 283 = AIR 1989 SC 1530; Sangamesh Printing Press v. Chief Executive Officer, Taluk Development Board (1999) 6 SCC 44; Chief Conservator of Forests, Government of A.P. Vs. Collector & Ors (2003) 2 SCR 180 = AIR 2003 SC 1805; Bal Niketan Nursery School Vs. Kesari Prasad (1987) 3 SCR 510 = AIR 1987 SC 1970, relied on.

s.100 – Second appeal – Substantial question of law – High Court deciding the second appeal without framing any substantial question of law though making reference to the pleadings taken in the second appeal, it discussed and decided the question of law raised therein – HELD: Matter remanded to High Court to decide the second appeal afresh after framing the substantial question of law.

Case Law Reference:

(1964) SCR 387	relied on	para 8
(1977) 2 SCR 409	relied on	para 9
(1989) 2 SCR 283	relied on	para 10
(1999) 6 SCC 44	relied on	para 11
(2003) 2 SCR 180	relied on	para 12
(1987) 3 SCR 510	relied on	para 13

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2754 of 2007.

From the Judgment & Order dated 10.04.2006 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Second Appeal No. 122 of 2006.

June Choudhary, C.K. Sucharita for the Appellants.

R. Venkataramani, P. Raja Sekhar, K. Subba Rao, Aniruddha P. Mayee for the Respondents.

A The following order of the Court was delivered

O R D E R

B 1. The present appeal has been preferred against the
 judgment and order dated 10.4.2006 passed by the High Court
 of Andhra Pradesh at Hyderabad in Second Appeal No.122/
 06 by which it dismissed the Second Appeal filed by the
 appellants affirming the judgments and order of the First
 Appellate Court dated 15.4.2005 passed in Appeal Suit
 C No.121/2000 and of the Trial Court dated 28.7.2000 passed
 in O.S. No.26/94.

D 2. Facts and circumstances giving rise to this Appeal are
 that the respondents herein filed Original Suit No.26/94 for
 seeking declaration of title and possession of the suit land
 admeasuring Ac.8.90 cents situate within the erstwhile
 jamindari of Tarla Estate in Srikakulam District and for other
 consequential relief, i.e. permanent injunction from interfering
 in any manner with the peaceful possession and enjoyment of
 suit land, before the Senior Civil Judge at Sompeta. The
 E appellants/defendants filed written statement contending that
 the suit land being forest land had vested in the State of Andhra
 Pradesh and in order to substantiate the said averment it
 annexed the copy of the Gazette Notification, G.O. No.650
 dated 25.9.1975 according to which possession and enjoyment
 F of land in dispute was shown to be in favour of the Forest
 Department. The Ld. Trial Court vide judgment and decree
 dated 28.7.2000 decreed the suit. Being aggrieved, the
 appellants preferred Appeal Suit No.121/2000 before the First
 Additional Judge, Srikakulam District mainly on the ground that
 G the plaintiffs/respondents were not in possession and enjoyment
 of the suit land and it was a Government land in physical
 possession of the Forest Department. However, the appeal
 preferred by the appellants stood dismissed vide judgment and
 order dated 15.4.2005. Being aggrieved, the appellants
 preferred Second Appeal before the High Court which has also

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been dismissed vide impugned Judgment dated 10.04.2006. A
Hence, this appeal.

3. Shri Anup Chaudhary, Ld. Senior Counsel appearing for the appellants and Shri R. Venkataramani, Ld. Senior Counsel appearing for the respondents have made claims and counter-claims on various issues and merit of the case. B
However, we are of the view that the High Court entertained the Second Appeal which was not maintainable for more than one reason and, particularly, that relief sought by the plaintiffs/ respondents was declaration of title in respect of the suit land which according to the appellants has been in favour of the State of Andhra Pradesh and in physical possession of the Forest Department in view of Notification dated 25.9.1975. C
However, State of Andhra Pradesh had not been the appellant/ party before the High Court though it was defendant no.1 before the Trial Court as well as before the First Appellate Court. A large number of private defendants in the Original Suit were also not impleaded as respondents in Second Appeal before the High Court. The Second Appeal has been filed by the three appellants, namely, District Collector, Mandal Revenue Officer and the District Forest Officer impleading original two plaintiffs as respondents. The original defendants 4 to 11 had not been impleaded before the High Court. Thus, the question does arise as to whether Appeal in the form it had been presented before the High Court could be entertained without State of Andhra Pradesh being the appellant party. More so, D
the High Court did not frame any substantial question of law before deciding the Appeal though making reference to the pleadings taken in the Second Appeal, the Court has discussed and decided the question of law raised therein. E
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4. Admittedly, it is not a case where the order passed by statutory Authority was sought to be quashed in the suit, the relief sought in O.S. No.26/94 had been as under:- G

"(a) For declaration that the plaintiffs have title and possession over the suit land. H

A (b) For consequential relief of permanent injunction against all the defendants restraining them and their agents, subordinates, servants and workmen from ever interfering in any manner with the peaceful possession and enjoyment of the suit lands of the plaintiffs.”

B (c)

(d)”

C Thus, it is evident from the aforesaid relief clause that plaintiffs had sought declaration of title and possession over the suit land and further consequential relief of permanent injunction. Thus, in case the title is also claimed by the State Government with it, we are of the prima facie view that the State of Andhra Pradesh was a necessary party.

D 5. Section 79 of the Code of Civil Procedure (hereinafter ‘CPC’) specifically deals with suits by and against the Government and provides that in suits by and against the Government, the authority to be impleaded as the plaintiff or E defendant, would be the Union of India or Central Government or the State or State Government.

Proviso to Rule 9 of Order 1 provides that non-joinder of necessary party is fatal.

F 6. Rule 1 of Order XXVII CPC deals with suits by or against the Government or by officers in their official capacity. It provides that in any suit by or against the Government, the plaint or the written statement shall be signed by such person as the G Government may like by general or special order authorize in that behalf and shall be verified by any person whom the Government may so appoint.

H 7. Article 300 of the Constitution deals with legal proceedings by or against the Union of India or State and provides that in a suit by or against the Government, the authority

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to be named as plaintiff or defendant, as the case may be; in the case of the Central Government, the Union of India and in the case of State Government, the State, which is suing or is being sued. A

8. A Constitution Bench of this Court in *The State of Punjab Vs. The Okara Grain Buyers Syndicate Ltd., Okara & Anr.* AIR 1964 SC 669 held that if relief is sought against the State, suit lies only against the State, but, it may be filed against the Government if the Government acts under colour of the legal title and not as a Sovereign Authority e.g. in a case where the property comes to it under a decree of the Court. B C

9. In *Ranjeet Mal Vs. General Manager, Northern Railway, New Delhi & Anr.*, AIR 1977 SC 1701, this Court considered a case where the writ petition had been filed challenging the order of termination from service against the General Manager of the Northern Railways without impleading the Union of India. The Court held as under :- D

“The Union of India represents the Railway Administration. The Union carries administration through different servants. These servants all represent the Union in regard to activities whether in the matter of appointment or in the matter of removal. It cannot be denied that any order which will be passed on an application under Article 226 which will have the effect of setting aside the removal will fasten liability on the Union of India, and not on any servant of the Union. Therefore, from all points of view, the Union of India was rightly held by the High Court to be a necessary party. The petition was rightly rejected by the High Court.” E F

[see also *The State of Kerala v. The General Manager, Southern Railway, Madras* AIR 1976 SC 2538] G

10. In *Kali Prasad Agarwala (Dead by L.Rs.) & Ors. v. M/s. Bharat Coking Coal Limited & Ors.* AIR 1989 SC 1530, while considering an issue whether the suit lands had vested, H

A free from encumbrance in the State consequent upon the issuance of Notification under Section 3 of the Bihar Land Reforms Act, this Court did not entertain the case observing as under :-

B “In our opinion, it is unnecessary to consider the first question and indeed it is not proper also to consider the question in the absence of the State which is a necessary party for adjudication of that dispute. The State of Bihar is not impleaded as a party to the suit and we, therefore, refrain from expressing any opinion on the first question.”

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D 11. In *Sangamesh Printing Press v. Chief Executive Officer, Taluk Development Board* (1999) 6 SCC 44, the State was not impleaded as a party before the Trial Court in a money recovery suit. The same was dismissed on the ground of non-impleadment of necessary party. During appeal, an application was made under O. 1 R. 10 praying for impleadment of the State, however the High Court decided the matter on merits without considering the same. This Court observed as under:

E “Keeping in view the facts and circumstances of the case, we are of the opinion that the High Court should have decided the appellant’s application under Order 1 Rule 10 C.P.C. and, thereafter, proceeded to hear the appeal in question. Not having disposed of the application under Order 1 Rule 10 has caused serious prejudice to the appellant. We, therefore, set aside the judgment of the High Court and restore Regular First Appeal No 29 of 1987 to its file. The High Court should first deal with the application under Order 1 Rule 10 C.P.C. which is pending before it and then proceed to dispose of the appeal in accordance with law.”

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H 12. While considering the similar case in *Chief Conservator of Forests, Government of A.P. Vs. Collector & Ors*; AIR 2003 SC 1805, this Court accepted the submission that writ cannot be entertained without impleading the State if

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relief is sought against the State. This Court had drawn the analogy from Section 79 CPC, which directs that the State shall be the authority to be named as plaintiff or defendant in a suit by or against the Government and Section 80 thereof directs notice to the Secretary of that State or the Collector of the district before the institution of the suit and Rule 1 of Order XXVII lays down as to who should sign the pleadings. No individual officer of the Government under the scheme of the constitution nor under the CPC, can file a suit nor initiate any proceeding in the name and the post he is holding, who is not a juristic person.

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13. In *Bal Niketan Nursery School Vs. Kesari Prasad* AIR 1987 SC 1970, this Court held that application for impleadment of a necessary party can be filed at any stage of proceeding provided the Court is satisfied that exceptional circumstances prevailing in the case, warrant the impleadment.

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14. In view of the above, State of Andhra Pradesh was necessary party. Thus, the Second Appeal filed by the officials was not maintainable.

The High Court decided the appeal without considering this important aspect of the matter. Shri Anup Chaudhary, Ld. Senior Counsel has submitted that in order to meet the ends of justice, this Court should grant indulgence to the appellants to file an application for impleadment before this Court, and in case it is not willing to do so, the judgment and order of the High Court be set aside and the case be remanded to the High Court and appellants be given an opportunity to file an application for impleadment of the State therein. Shri R. Venkataramani, Ld. Senior Counsel opposed the suggestion made by Shri Anup Chaudhary.

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15. That State of Andhra Pradesh was a party before the Trial Court as well as before the First Appellate Court. In such a fact-situation and in order to meet the end of justice, an opportunity should be given to the appellants to move an

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- A application for impleadment of the State of Andhra Pradesh. Such a course is in public interest as the State who also claim to have title over the suit land cannot be deprived of the right to present its case before the Court in case it loses the land. However, it would be desirable that such a course is adopted before the High Court.
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16. In view of the above, we set aside the judgment and order of the High Court passed in Second Appeal No.122/06 dated 10.4.2006 and remand the case to the High Court to decide afresh after framing the substantial question of law. The appellants are permitted to file an application for impleadment of the State of Andhra Pradesh as appellant and if such an application is filed, the High Court shall be at liberty to consider it in accordance with law. With these observations, the appeal is allowed. No costs.
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- D R.P. Appeal allowed.