

Prakash and Others Vs. Thimmamma and Others

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Court : Karnataka

Decided On : Dec-11-2014

Judge : Huluvadi G. Ramesh

Appeal No. : R.S.A. No. 93 of 2010

Appellant : Prakash and Others

Respondent : Thimmamma and Others

Judgement :

(Prayer: This Appeal is filed under Section 100 of CPC against the judgment and decree dated 27.2.2008 passed in RA.No. 174/2005, on the file of Prl.District Judge, Mandya.)

1. This appeal is filed by the plaintiffs against the judgment and decree passed by the Prl. District Judge, Mandya, in R.A.No. 174/2005, dated 27th February 2008.
2. Plaintiffs filed suit in O.S.No.39/1997 before the Prl.Civil Judge (Sr.Dn.) and JMFC, Srirangapatna, for partition and separate possession of suit schedule properties. The propositus of the family was one Patel Neelegowda. He had two sons viz., Patel Venkategowda and Puttegowda. Plaintiffs are the children of Patel Puttegowda, whereas defendants are the children of Patel Venkategowda. According to the plaintiffs, the suit schedule properties are in joint possession of Venkategowda and Puttegowda, But, according to defendants, there was prior partition in the year 1947. After hearing, the trial Court decreed the suit and held

that plaintiffs and defendant No.9 -wife of late Puttegowda, are jointly entitled to get half share in the suit schedule properties. Being aggrieved, defendants preferred appeal in R.A.No. 174/2005. The lower Appellate Court having taken note of the fact that based on palupatti Ex.D-3, several revenue entries have been made and that palupatti need not be compulsorily registered, allowed the appeal and dismissed the suit filed by the plaintiffs. As against which, this second appeal by the plaintiffs.

3. The learned counsel for the appellants-plaintiffs submitted that the trial Court has rightly decreed the suit, but the lower Appellate Court has committed an error in not appreciating the revenue entries of the lands in question which show that the properties are held jointly and accordingly, sought for allowing the appeal.

4. The stand taken by the respondents is that there is delay of nearly two years in filing this appeal and on perusal of the verifying affidavit, there is no satisfactory explanation with regard to delay. In such a situation, the Apex Court held that Court cannot condone the appeal as it has no unbridled discretionary power, Apart from that, even the opportunity to cross-examine the witnesses has not been availed of by the plaintiffs and as such, the appeal is to be dismissed.

5. Having heard the learned counsel for respective parties, the substantial questions of law that arise for consideration are whether delay could be condoned in this Context and whether there is prior partition and the same has been proved by the defendants?

6. So far as limitation aspect is concerned, the Apex Court in the case of Lanka Venkateswarlu (D) by LRs -vs- State of A. P. and others (AIR 2011 SC 1199), held while considering applications for condonation of delay under Section 5 of the Limitation Act, the Court do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers. In the case on hand, on perusal of the affidavit filed, there is casual approach on the part of the plaintiffs.

7. So far as proof of oral partition by the respondents- defendants is concerned, in the year 1947, there is said to be an oral partition amongst Patel Neelegowda and his two sons and the same was reduced in writing i.e., palupatti Ex.D-3 which is said to be reflected from the revenue records. The trial Court has not taken into consideration the said oral partition, but the same has been rightly noted by the lower Appellate Court. In this connection, the learned counsel for the respondents-defendants has relied upon the judgment of this Court in the case of Chikke Gowda and. another -vs L. Govinde Gowda, reported in ILR 200C Kar. 3955, wherein this Court held that palupatti can be looked into for corroborative purpose in order to ascertain the intention of the coparcener to divide his status.

In view of the factual position on the point of limitation, as well as on merits, I am of the opinion that, based on the partition, rightly the lower Appellate Court reversed the finding of the trial Court. While answering the substantial questions of law accordingly,. Appeal is dismissed. The parties are directed to bear their own costs.

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