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Court : Karnataka

Decided On : Jul-15-2014

Judge : Huluvadi G. Ramesh

Appeal No. : Civil Revision Petition No. 1415 of 2004

Appellant : L. Premkishore and Others

Respondent : M/s. Revajeethu Builders Developers and Others

Judgement :

(Prayer: This Revision Petition is filed under S. 115 of the CPC praying to set aside the orders passed on IA 3 and IA 5 to 7 on 4.12.2002 in OS 226171996 by the 31st Addl. City Civil Judge, Bangalore.)

1. This is a defendants appeal (i.e., defendants 8, 9 and 11-16) challenging the order of rejecting their applications to recall the order dated 9.11.1999 or review the said order allowing the plain tiff/ISI respondent herein to pay the deficit court fee on the prayer for recovery of money and in the alternative for declaration and possession.

It transpires that property measuring 5.24 acres in Sy.No.6/1 and 6/2 of Dasarahally, Uttarahally Hobli, Bangalore South Taluk was the subject matter under the Urban Land Ceiling Act (ULCA for short) which was sold in favour of the

plaintiff. It appears as there was some illegality committed in granting permission contrary to the provisions of the ULCA, matter reached the Supreme Court where such a transaction was held void on the ground that such permission granted is contrary to the provisions of the ULCA. Now, as per the terms of the agreement it appears an amount of Rs.52,97,111/- was paid to the defendants and remaining amount of Rs.37,02,889/- was to be paid to the banker. However, the said amount has not been accepted by Andhra Bank and that money remains with the plaintiff himself. Meanwhile, Apex Court declared the transaction as void. In the present suit filed for recovery of money and in the alternative for declaration and possession, it appears an amount of Rs.2 lakhs and odd is said to be paid at the time of filing the suit. However, objection is raised by the office of the trial court under S.24 A of the Karnataka Court Fees and Suit Valuation Act as when there was also an alternative prayer for declaration and possession. In the case, the suit property is valued at Rs.90 lakhs initially however, plaintiff is shown to have valued it at Rs.52,97,111/-. Be that as it may, meantime several applications were filed by the plaintiff seeking adjournment and the matter was adjourned from time to time. When office has raised objection initially as per the submission of the petitioners' counsel, within a reasonable time plaintiff should have paid the remaining revised valuation slip. It was for the plaintiff himself to file revised valuation slip. That he did not do. Thereafter when office has raised objection that also is not complied with by filing revised valuation slip. Further, the impugned order came to be passed, after adjourning the matter several times on 4.12.2002.

In the impugned order passed, it is noted by the presiding officer that the order sheet says that 'his predecessor did not determine the sufficiency of the court fee and there was no order subsequently directing the plaintiff to file deficit court fee on such determination. The said order is sought to be recalled or reviewed', It appears application is filed by the defendants to review the order permitting the plaintiff to pay the deficit court fee. The reasoning given by the trial court is that the error committed by the court should not turn to be a punishment to the litigant at this length of time, the said order dated 9.4.1999 is recalled, then the position will be the court will have to determine the sufficiency of the court fee. Stating that the plaintiff having already paid the court fee, no useful purpose would be served by recalling the order dated 9.4.1999, the applications filed by the defendants were

rejected. Hence, this revision.

The main ground urged by the petitioners' counsel is, as per the provisions of S.21 and 24(a) of the Karnataka Court Fees and Suit Valuation Act, it was duty bound on the part of the plaintiff to pay advalorem court fee and thereafter, when the office has raised objection immediately as per S.24 (a) of the Act, unnecessarily he went on taking time and matter was adjourned from time to time and without sufficient reason. Though application is filed by the defendants challenging the said order, it has been rejected on a technical ground and accordingly submitted, the rulings cited by the plaintiff will not help him and it is all in a different context. Even the decision cited by the plaintiff in the case of P K Palanisamy Vs N Armugham and Anr - 2009(9) SCC 173 also is not applicable.

On the other hand, counsel for the 1st respondent argued, once the court has passed an order and when substantial amount has been paid, question of recalling the order permitting the plaintiff to pay the deficit court fee, even if it is at a distant length of time, does not in any way vitiate the filing of the suit much less based on the said ground application filed under O 7 R 11, CPC cannot be entertained. There is justification in the order passed while rejecting the applications filed by the defendants that too after several days and accordingly, sought dismissal of the revision petition.

In reply, petitioners' counsel referring to the decision of the Apex Court submitted, the application filed under O 7 R 11, CPC to pay the deficit court fee and the permission granted at a distant length of time without assigning any reasons is contrary to settled principles and accordingly prays the appeal be allowed.

In the decision relied upon by the respondent's counsel in P K Palanisamy's case the Apex Court referring to S.149, CPC has observed, discretionary power has to be exercised to make up the court fee deficiency and extend time for its payment on the ground taken by plaintiff that sufficient court fee stamps were not available in the Sub- Treasury, is held sustainable.

The principle laid down there is, any such order passed must be subject to the discretion of the court and court must apply its mind and discretion either in

allowing or not allowing taking into consideration the delay in payment of deficit court fee. Accordingly, petitioners' counsel submitted that the decision relied upon by the plaintiff/respondent is not applicable to the case on hand.

In the said judgment it is also observed, as per O 7 R 11 CPC, on the legal fiction created by the deeming provision of S.149 it is held that when deficit court fee is paid under S.149, the same would be deemed to have been paid in the first instance therefore, such plaint cannot be rejected.

Counsel for the respondent taking me through several portions in the judgment tried to contend that there is justification in the order passed by the trial court permitting him to pay the deficit court fee and also on the point of delay. In the case of Butnadevi Vs Amit Talwar and Ors (FAO (OS) 521/2013 decided on 8.7.2014 by the Delhi High Court it is observed that there is twelve years time for seeking specific performance as per Art.65 of the Limitation Act though not a specific provision is addressed for institution of the suit for possession of immovable property based on title, twelve years commencing it becomes adverse to the plaintiff and accordingly submitted, in the above said judgment it is noted that twelve years time has not expired as on the date the counterclaim was filed and how it can be said that the counterclaim of the respondent/defendant for possession of the property purchased from the appellant/plaintiff can be said to be time barred.

In so far as payment of court fee of Rs.2 lakhs and odd, the valuation of the property at Rs.52 lakhs and odd appears to be initially for recovery of money. Thereafter, it appears plaintiff also made up his mind to seek for a declaration and possession. Prior to that it appears the sale transaction has taken place between the parties which is disapproved by the apex court on the ground that it is a void transaction. The sale of the property remains cancelled. Now the plaintiff's prayer is for declaration and possession in the alternative. Of course it is subject to the discretion of the court, also subject to provisions provided under the Specific Relief Act. Be that as it may, as per the intention when plaintiff had paid the amount of Rs.21 lakhs and odd calculating the worth of the property which is Rs.92 lakhs at Rs.52 lakhs, it would probably be on the point of recovery of money and Rs.32

lakhs and odd remained with the plaintiff himself i.e., the amount which was due to the bank. Ultimately, the said transaction was held to be void by the apex court. So far as the application filed for rejection of the plaint is concerned, that is not answered by proper reasoning. However, so far as payment of court fee is concerned, after calculating subsequently it has been accepted after lapse of several months. Initially when objection was raised by the office as per S.24(a) of the Court Fees and Suit Valuation Act, revised valuation slip was to be paid by the plaintiff suo motu but unnecessarily he went on taking time and it definitely refers to the fact whatever court fee paid by him earlier was might be with an intention to maintain the suit for recovery of money. But the alternative prayer for declaration and possession, when he has not made up his mind to file a revised valuation slip and went on seeking time, the court of course would have extended time and indiscriminately granted him time and thereby plaintiff availing the benefit of it would definitely non-suit him for the prayer of declaration and possession. In that view of the matter, the amount accepted and the same paid by the plaintiff would be non-est taking into consideration the manner in which the suit has been contested. The trial court has not applied its mind so far as the IA filed for rejection of the plaint under O 7 R 11, CPC. Regarding payment of court fee is concerned, it was intended for recovery of money. The prayer sought for as an alternative by the plaintiff is for declaration and possession appears to be an after thought. Moreover, when initially substantial amount is being paid it is treated only for the purpose of recovery of money. So far as declaration and possession is, concerned, court fee could have been paid on time much less within a reasonable time. Whereas the plaintiff also was not prompt enough in filing revised valuation slip. In that view of the matter, when the trial court went on adjourning the matter at the request of the plaintiff indiscriminately and one fine day allowing the application to pay the deficit court fee is without application of mind, without adhering to the principles laid down in S.149, C.P.C and also without assigning proper reasons as required under S.24(a) of the Karnataka Court Fees and Suit Valuation Act.

Accordingly, the order is modified holding that the prayer of the plaintiff for declaration and possession cannot be entertained at this length of time. The impugned order accepting the amount without assigning reasons belatedly, on the

deficit court fee is recalled. At the most, his prayer could be restricted to go for refund of money as he originally intended to do so.

Petition is disposed of.

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